FIFTY-EIGHTH REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1968, through December 31, 1968

Harry T. Westcott, Chairman

John Worth McDevitt, Commissioner

Clawson L. Williams, Jr., Commissioner

M. Alexander Biggs, Jr., Commissioner

*Marvin R. Wooten, Commissioner

NORTH CAROLINA UTILITIES COMMISSION

Office of the Chief Clerk

Mary Laurens Richardson
Post Office Box 991
Raleigh, North Carolina 27602

The Statistical and Analytical Report of the North Carolina Utilities Commission is printed separately from the volume of Orders and Decisions and will be available from the Office of the Chief Clerk of the North Carolina Utilities Commission upon order.

* Appointed December 20, 1968, to fill the unexpired term of Thomas R. Eller, Jr., who resigned December 20, 1968

LETTER OF TRANSMITTAL

December 31, 1968

The Governor of North Carolina
Raleigh, North Carolina

Sir:

Pursuant to the provisions of Section 62-17 (b) of the General Statutes of North Carolina, providing for the annual publication of the final decisions of the Utilities Commission on and after January 1, 1968, we hereby present for your consideration the report of the Commission's decisions for the twelve-month period beginning January 1, 1968, and ending December 31, 1968.

The additional report provided under G.S. 62-17 (a), comprising the statistical and analytical report of the Commission, is printed separately from the volume and will be transmitted immediately upon completion of printing.

Respectfully submitted,

NORTH CAROLINA UTILITIES COMMISSION

Harry T. Westcott, Chairman

John Worth McDevitt, Commissioner

Clawson L. Williams, Jr., Commissioner

M. Alexander Biggs, Jr., Commissioner

Marvin R. Wooten, Commissioner

Mary Laurens Richardson, Chief Clerk

CONTENTS

1968 ANNUAL REPORT OF DECISIONS

OF THE

NORTH CAROLINA UTILITIES COMMISSION
TABLE OF CASES AND ORDERS REPORTED

Note: For General Orders, see end of Alphabetical Index Listing.

C

D

G

H

K

L

M

N

O

P

S

T

GENERAL ORDERS

Administrative Orders

General

Gas

Telephone

DOCKET NO. T-A-2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Kannapolis, North Carolina - Commercial) ADMINISTRATIVE
Zone for Motor Freight Carriers) RULING

It appearing, That the Town of Kannapolis is located in both Rowan and Cabarrus Counties and that a question has arisen as to whether a common carrier authorized to serve Rowan County but not Cabarrus County may also serve that portion of the Town of Kannapolis which lies in Cabarrus County;

It further appearing, That the Commission has previously ruled that common carriers holding authority to serve a portion of a municipality located in one county should likewise be authorized to serve the entire municipality regardless of the county or counties in which it is located;

It further appearing, That the Town of Kannapolis is unincorporated and, thus, has no clearly defined limits;

It is ordered, That common carriers authorized by this Commission to serve Rowan County but not Cabarrus County, or Cabarrus County but not Rowan County may serve any portion of the Town of Kannapolis which lies within five and one-half miles of the Kannapolis Main Post Office.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. 4066-V

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension of Rates on Dimethyl Terephthalate,)
Truckload, and Institution of Investigation to)
Determine the Proper Classification of Said) ORDER
Commodity)

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on May 21, 1968

BEFORE: Chairman Harry T. Westcott (presiding) and Commissioners John W. McDevitt, M. Alexander Biggs, Jr., Clawson L. Williams, Jr., and Thomas R. Eller, Jr.

APPEARANCES:

For the Respondents:

Cyrus D. Hogue, Jr.
Hogue, Hill & Rowe
|0| South 3rd Street
Box |268, Wilmington, North Carolina
For: Bulk Haulers, Inc.

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Bulk Haulers, Inc.

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
Attorneys at Law
|08 Commerce Place
P. O. Box 2307, Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.
Maybelle Transport

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Box 99|, Raleigh, North Carolina

ELLER, COMMISSIONER: These proceedings arise on filing of motor common carrier tariffs by North Carolina Motor Carriers Association, Inc., as agent (|) for Bulk Haulers, Inc., providing rates for the transportation of dimethyl terephthalate (hereinafter called "DMT" for convenience) in pellet form, in containers, on flatbed trailers (and return of containers), and (2) as agent for all authorized carriers of liquid commodities providing rates for the same commodity in molten (liquid) form in bulk in tank trucks.

Chemical Leaman Tank Lines, Inc., and Maybelle Transport Company petitioned for suspension and investigation of the tariffs, alleging that DMT is not a petroleum product or derivative and, therefore, could not be transported by carriers holding no more than petroleum rights.

The Commission suspended the effectiveness of both tariffs, ordered investigation as petitioned and scheduled public hearings thereon. The matter came on and was heard as scheduled with parties present as captioned.

The greater weight of the substantial, material, and competent evidence adduced justifies the following

FINDINGS OF FACT

1. The North Carolina Motor Carriers Association, Inc., is the duly authorized agent for the carriers on whose behalf it made subject filings and said carriers are authorized common carriers of various commodities in intrastate commerce in North Carolina and are properly before the North Carolina Utilities Commission, which has jurisdiction over the subject matter of these proceedings.

2. Petitioning carriers in protest are duly authorized carriers of various commodities in intrastate commerce in North Carolina and are properly before the Commission, except that Chemical Leaman Tank Lines, Inc., and Maybelle Transport Company do not hold authority for the transportation of DMT in pellet form, in bulk or in containers and, therefore, are without standing to contest the authority of Bulk Haulers, Inc., to transport DMT in dry pellet form.

3. The two tariffs in question are essentially as follows:

Item 2725 of Supplement No. 3, to NCMCA Tariff No. 2|-B, N.C.U.C. No. 83, for account Bulk Haulers, Inc., providing point-to-point rates from the plant site of Hercules, Inc., near Wilmington, North Carolina, to various points in the State for:

"DIMETHYL TEREPHTHALATE (Sic) in pellet form, in containers, on flatbed trailers, minimum weight 40,000 lbs. (See Note |).

Note | - The rates will include the return of the empty containers.

Note 2 - Applicable only via Bulk Haulers, Inc."

Description published in Item 3250 of Supplement No. 7, to NCMCA Tariff No. 2|-B, N.C.U.C. No. 83, for account carriers having authority to transport liquid commodities, in bulk, providing point-to-point rates from the plant site of Hercules, Inc., near Wilmington, North Carolina, to various points in the State for:

"MOLTEN DIMETHYL TEREPHTHALATE, minimum load 40,000 lbs."

4. Bulk Haulers, Inc., for whose account Item No. 2725 of Supplement No. 3 aforesaid is filed, is a duly organized and existing corporation with headquarters in Wilmington, North Carolina. It holds authority and operates under North Carolina Utilities Commission Motor Common Carrier Certificate No. C-862, which in pertinent part provides as follows:

Transportation of gasoline storage tanks, structural steel, pipe of all kinds, petroleum containers, such as drums and barrels, cleaning solvents and other petroleum derivatives, including motor oil and greases in bulk and in packages, from all points and places within the counties of Pender, Onslow, New Hanover and Brunswick to all points and places in the State of North Carolina, and return from all points and places within the State to all points and places within the counties of Pender, Onslow, New Hanover and Brunswick. (emphasis added)

LIMITATION: Truck Load Only.

5. DMT is a product scheduled to enter production and distribution by Hercules, Inc., at and from its newly constructed plant near Wilmington on or about June 1, 1968. The commodity, used in the polyester fibre industry, will move in both intrastate and interstate commerce. In interstate commerce it is classified both as a petroleum product and a chemical for transportation authority purposes.

6. DMT is a hydro carbon produced from para-xylene and methanol with oxygen, the components of the end-product being 51% para-xylene, 15% methanol, and 33% oxygen. Para-xylene is produced from raw petroleum and petroleum feed stocks. Methanol is produced from reformed natural gas passed over steam. Compressed air produces oxidation and catalytic reaction on the two chemicals, resulting in DMT, molten and in pellets. The greatest part of the production cost of DMT is in the two raw materials themselves rather than the manufacturing process.

7. Molten DMT is transported at about 312° Fahrenheit and under about four pounds pressure. Neither molten nor dry DMT is highly explosive, inflammable, or otherwise dangerous for transportation other than for the danger of burns from the high temperature of the molten product. DMT in pellet form is transported on flatbed trucks in containers 42" x 46" x 96".

CONCLUSIONS

The tariff providing rates for the transportation of dry DMT in containers is participated in only by Bulk Haulers, Inc. Neither of the two (2) protesting carriers is authorized to participate in this tariff. The tariff for transportation of molten (liquid) DMT in bulk in tank trucks is participated in by several carriers authorized to transport liquid commodities, including the two (2) protesting carriers.

The transportation characteristics for molten DMT are somewhat different from liquid petroleum products because (1) it is transported at a high temperature requiring heat-resistant, more expensive, equipment resulting in higher rates than for liquid petroleum and (a) it does not

originate at the terminals characteristic of the authorities of carriers of liquid petroleum and petroleum products.

Bulk Haulers, Inc., is neither an authorized carrier of liquid commodities nor of dry commodities. However, it is authorized to transport "petroleum derivatives" both in bulk and in packages. The protesting carriers contend that DMT, whether in bulk or in packages, is not a "petroleum derivative" such as would authorize Bulk Haulers to participate in either of the filed tariffs or to offer services and rates in the transportation of DMT, liquid or dry.

To determine the issues, it is first necessary to determine whether DMT is a "petroleum derivative" within the context of usage in Bulk Haulers' certificate. If DMT is a petroleum derivative for this purpose, Bulk Haulers is authorized to participate in the tariffs and to transport DMT; if not, Bulk Haulers is precluded from doing either.

We realize that, by voyaging out of context, it is possible broadly to classify a multitude of products and commodities as "petroleum derivatives". Within the context of the authority here in question, however, a commodity must be directly and primarily derived from petroleum; it must not by manufacturing processes have acquired an identity in some other transportation classification; its value and its cost must be primarily due to its source of derivation. For example, clothing may be primarily of polyester, which may be primarily of DMT, which in turn is primarily of petroleum derivation - this does not make the clothing a petroleum derivative for transportation classification purposes.

Para-xylene is the primary constituent element of DMT. Para-xylene in turn is comprised of paraffin and xylene. Paraffin has historically been classified a petroleum product and xylene has been so classified by Commission order and rule. Methanol, the secondary element of DMT, is derived from natural gas refinement of petroleum. These raw products rather than the oxidation and catalytic production process constitute the greatest proportion of production costs of DMT. But for pelletizing of the dry product, the high temperature of the liquid product, and the fact that it is not shipped from existing petroleum terminals, DMT would retain substantially the same identity and transportation characteristics as a petroleum product. DMT cannot be feasibly derived or produced synthetically; i.e., in any way other than from a petroleum base.

Accordingly, we conclude that DMT may be appropriately classified as a petroleum derivative for determining Bulk Haulers' authority to participate in the two tariffs in question.

In its tariff providing for the transportation of DMT in containers (pelletized), Bulk Haulers provides for the return of the containers under the same rate. We hold that

the term "petroleum containers" as used in Bulk Haulers' authority is insufficient to confer this right upon Bulk Haulers under present rules and interpretations of this Commission. The containers used simply are not "petroleum containers" within the context of Bulk Haulers' authority.

Accordingly, IT IS ORDERED:

1. That Bulk Haulers, Inc., be, and it hereby is, adjudged to be authorized to participate in the two tariffs which are the subject of this proceeding and is authorized to transport in truckload lots only dimethyl terephthalate, both in molten (liquid) form in bulk and in pellet form in containers on flatbed trailers. Bulk Haulers, Inc., is not authorized to transport empty containers used in transporting dimethyl terephthalate in pellet form.

2. That the suspension of the effectiveness of subject tariffs entered by order and supplemental order in this docket be, and the same hereby is, vacated and said tariffs are allowed to become effective as published.

3. That Bulk Haulers, Inc., be, and it hereby is, directed not to transport on return, or otherwise, empty containers used in the transportation of dimethyl terephthalate until it has made application for permanent authority and temporary authority to do so and has been issued at least temporary authority by this Commission. Bulk Haulers, Inc., is allowed ten (10) days from the date this order issues in which to make the application herein provided.

4. That the request of Petitioners, Maybelle Transport Company and Chemical Leaman Tank Lines, Inc., for a ruling that Bulk Haulers, Inc., is without authority to file tariffs providing for, and hold itself out for, the transportation of dimethyl terephthalate be, and the same hereby is, denied.

5. That the investigation instituted in this docket be, and it hereby is, terminated.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Amendment of Electric and Telephone Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines	) ORDER AMENDING RULES) R8-26 AND R9-1 TO PROVIDE) FOR RANDOM SEPARATION OF) ELECTRIC AND COMMUNICATIONS) CONDUCTORS

BY THE COMMISSION: The North Carolina Utilities Commission, acting under the power and authority delegated to it under the Public Utilities Act, G.S. 62-31, and upon consideration of its Rule R8-26, Safety rules and regulations, and Rule R9-1, Safety rules for telephone and telegraph wire crossings, wherein the Commission adopted the rules and regulations of the National Bureau of Standards "Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines" (N.B.S. Handbook 81) issued November 1, 1961, and further having under consideration Supplement 2 to said N.B.S. Handbook 81 duly adopted by the National Bureau of Standards, issued March, 1968, containing revision of Subsection 294, Part 2 of the National Electrical Safety Code to provide for random separation between supply and communications conductors, and the Commission being of the opinion that such revision of the safety rules heretofore adopted by the Utilities Commission is in the public interest and promotes economic installation of buried electric supply and communications conductors and that said amendments to National Bureau of Standard Handbook 81 should be adopted by the Utilities Commission by reference as amendments to its said Rules R8-26 and R9-1,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. Rule R8-26 is hereby amended to read as follows:

"Rule R8-26. Safety rules and regulations. - The rules and regulations of the National Bureau of Standards, 'National Electrical Safety Code' and 'Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines' (N.B.S. Handbook 81), issued November 1, 1961, as amended by Supplement 2 to N.B.S. Handbook 81 issued March, 1968, revising Subsection 294, Part 2, of the National Electrical Safety Code, are hereby adopted by reference as electric and communication safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of the Commission. (The National Bureau of Standards Handbook 81 and said Supplement thereto may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., Price $1.75 in

cloth cover.) (NCUC Docket No. M-100, Sub 6, 11/4/68)"

2. Rule R9-1 is hereby amended to read as follows:

"Rule R9-1. Safety rules for telephone and telegraph wire crossings. - The rules and regulations of the National Bureau of Standards entitled 'National Electrical Safety Code' and 'Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines' (N.B.S. Handbook 81) issued November 1, 1961, as amended by Supplement 2 to N.B.S. Handbook 81 issued March, 1968, revising Subsection 294, Part 2, of the National Electrical Safety Code, as the same relate to wire crossings and other safety rules for telephone and telegraph wires and other communications equipment, are hereby adopted by reference as communication safety rules of this Commission and shall apply to all telephone and telegraph utility companies which operate in North Carolina under the jurisdiction of the Commission. (The National Bureau of Standards Handbook 81 and said Supplement thereto may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., Price $1.75 in cloth cover.) (NCUC Docket No. M-100, Sub 6, 11/4/68)"

ISSUED BY ORDER OF THE COMMISSION.

This 4th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Adoption of Rule Construing Insurance and Safety Regulations Applicable to Exempt Bus Carriers	))))	ORDER ADOPTING RULE R2-5.1 RELATING TO EXEMPT PASSENGER CARRIERS

BY THE COMMISSION: The North Carolina Utilities Commission acting under the power and authority delegated to it under the Public Utilities Act, G.S. 62-3] and G.S. 62-260(f) and having under consideration the provisions of G.S. 62-260(f), as enacted by the Session Laws of 1967, Chapter 1135, and the Commission being of the opinion that the intent of G.S. 62-260(f) is to apply the insurance and safety regulations of the Commission to motor carriers transporting passengers for compensation within the meaning of G.S. 62-3(17) defining "motor carrier" to mean common carrier and contract carrier would apply to such carriers of

exempt passengers for hire under certificates of exemption from the Commission, and pursuant to the authorization of said section to promulgate rules and regulations for the enforcement of said section, the Commission hereby promulgates and adopts the following rule for the enforcement of G.S. 62-260(f) concerning safety rules and insurance rules for exempt passenger carriers:

Chapter 2 of the Rules and Regulations of the North Carolina Utilities Commission relating to motor carriers is hereby amended by adding at the end of Article 2 of said chapter entitled "Exemptions" a new rule to read as follows:

"Rule R2-5.1. Insurance and safety regulation of exempt passenger carriers.-In the application of the insurance and safety regulations of the Commission under G.S. 62-260(f) and certificates of exemption under G.S. 62-260(g) the Commission deems that the term 'motor carriers' as included in said sections should be construed under the definition in G.S. 62-3(17) to be limited to motor common carriers or motor contract carriers of exempt passengers for hire who have been issued certificates of exemption by the Commission."

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The revision of Rule R2-46 of the)
Commission's Motor Carrier Regulations) ORDER

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends its Rule R2-46 to read as follows:

"Rule R2-46. Safety rules and regulations. The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 290-298 [formerly Parts 190-198] and amendments thereto) and the rules and regulations adopted by the U.S. Department of Transportation relating to hazardous materials (49 CFR Parts 170-190 [formerly Parts 71-79] and amendments thereto) shall apply to all motor carriers authorized by the North Carolina Utilities Commission to operate over the highways of the State of North Carolina, including exempt for hire passenger carriers."

and directs that the same shall be in full force and effect from and after the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Amendment of Rules and Regulations Affecting the Safety of Natural Gas Pipelines in the State of North Carolina	AMENDMENT

BY THE COMMISSION: By order issued on the 31st day of May, 1967, the Commission adopted rules and regulations affecting the safety of natural gas pipelines in the State of North Carolina. Said order included an Appendix B which modified the current edition of "Gas Transmission and Distribution Piping Systems," ASA B31.8, 1967 edition.

The Commission after further consideration of its order issued in this cause is of the opinion that Appendix B attached to said order should be further modified.

IT IS, THEREFORE, ORDERED That Appendix B of said order be and is hereby amended as follows:

841.412(b) Line 2, delete 'either', insert 'or water' after 'air'. Delete from 'or' on line 3 through 'pressure' on line 4.

841.412(d) Change table as follows:

TABLE 841.412(d)

Test Requirements for Pipelines and Mains to Operate at Hoop Stresses of 30% or More of the Specified Minimum Yield Strength of the Pipe

1	2	3
Location Class	Permissible Test Fluid	Prescribed Test Pressure Minimum
1	Water	1.25 x m.o.p.
	Air	1.25 x m.o.p.
2	Water	1.25 x m.o.p.
	Air	1.25 x m.o.p.
3	Water	1.50 x m.o.p.
4	Water	1.50 x m.o.p.

m.o.p. = maximum operating pressure

Note: If an operating company decides that the maximum operating pressure will be less than the design pressure a corresponding reduction in prescribed test pressure may be made as indicated in Column 3. However, if this reduced test pressure is used the maximum operating pressure cannot later be raised to the design pressure without retesting the line. See 845.22 and 845.23.

845.22(b)

Class No. Location	Pressure
1	Test Pressure 1.25
2	Test Pressure 1.25 Water 1.25 Air
3	Test Pressure[1] 1.50
4	Test Pressure[1] 1.50

[1] Other factors than 1.5 should be used if the line was tested under the special conditions described in 841.413 and 841.42. In such cases use factors that are consistent with the applicable requirements of these sections.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 19

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rules to Require Regulated Telephone Companies to File Construction and Operating Budgets	) ORDER ADOPTING RULE) FOR FILING) CONSTRUCTION PLANS) AND OBJECTIVES BY) TELEPHONE COMPANIES

BY THE COMMISSION: Upon consideration of the record in the above proceeding instituted on May 3, 1968, by Order for Rule Making Proceeding, as above entitled, and the Further Notice of Rule Making Proceeding entered herein on October 30, 1968, giving notice that the revised Rule R9-3 Annual Filing of Construction Plans and Objectives by Telephone Companies, as hereinafter set out, would be adopted by the Commission without further hearings unless written suggestions or request for hearing was received by the Commission on or before November 15, 1968, and it appearing that no written request for hearing or change in said Rule was received on said date,

IT IS, THEREFORE, ORDERED that Chapter 9 of the Rules and Regulations of the Utilities Commission is hereby amended by adding thereto a new Rule R9-3 to read as follows:

"Rule R9-3. Annual Filing of Construction Plans and Objectives by Telephone Companies.

On or before January 1, 1969, and on or before the same date of each subsequent year, each operating telephone company in North Carolina shall file with the Commission its construction plans and objectives together with related estimated capital expenditures for its North Carolina operations in the ensuing year. This statement shall be designed to give the Commission an over-all understanding of the company's primary service objectives, its plans for major service improvements or extensions, an outline of its plans for introducing new services, new exchanges, or new service areas, its anticipated plant and customer growth, and its anticipated technological changes in rendering or extending service. The statement shall represent the company's

best estimate and most current view of those construction activities required for the immediate future. The statement may be conditioned to reflect revisions based on changed conditions and demands, altered priorities, and progress on projects underway but not completed. A narrative discussion of such plans, objectives, and contingencies may be included. To the extent practicable, projects for service improvements shall be listed by exchanges for location purposes. Internal construction budgets kept in ordinary course of business which contain the same, or substantially the same, information required to be filed by this rule may be submitted in substitution, in whole or in part, of the information required to be submitted hereunder."

ISSUED BY ORDER OF THE COMMISSION.

This 13th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Adjustment in Uniform Intrastate Toll) GENERAL
Rate Hours, Days, and Mileage Brackets) ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on July 25, 1968, at 10 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Thomas R. Eller, Jr., John W. McDevitt, M. Alexander Biggs, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Respondents: None

For the Commission's Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina

BY THE COMMISSION: Due to refinements in separations procedures as between intrastate and interstate properties, and the Commission being charged with the duty and vested with the authority of inquiring into and keeping itself informed as to rates, charges, and services of the several telephone companies operating under its jurisdiction in the State of North Carolina; and having heretofore adopted and established uniform intrastate telephone toll rates and charges and practices in connection therewith; and having under consideration adjustments in the uniform telephone toll rate schedules insofar as applicable to hours, days, and toll mileage brackets as hereinafter set forth in Appendix "A" attached hereto and made a part hereof; and having made inquiries of, given notice to, and held informal discussions with all telephone companies subject to the Commission's jurisdiction; and, further, having issued an order to each of the telephone companies operating under the jurisdiction of this Commission in the State of North Carolina to appear before it on Thursday, July 25, 1968, at 10 a.m., to show cause, if any there be, why the Commission should not enter an order requiring the changes in time, days, and mileage brackets shown in Appendix "A" hereto attached; and each of said telephone companies operating under the jurisdiction of the Commission in the State of North Carolina having notified the Commission that, in lieu of appearance at the scheduled hearing, they waived the opportunity to show cause why the toll rate schedules insofar as applicable to hours, days, and toll mileage brackets as set forth in Appendix "A" attached hereto should not become effective, the Commission is of the opinion, finds and concludes that intrastate telephone toll rates in North Carolina should be revised in accordance with the schedule set forth in said Appendix "A" attached hereto and made a part hereof, and that the same should be applied uniformly throughout the State of North Carolina.

WHEREFORE, IT IS ORDERED That the intrastate message toll rate provisions as set forth in Appendix "A" attached hereto and made a part hereof shall apply to each telephone company operating under the jurisdiction of this Commission in the State of North Carolina on and after 12:01 a.m., August 31, 1968.

IT IS FURTHER ORDERED That each telephone company operating under the jurisdiction of this Commission in the State of North Carolina file amended telephone tariffs with the Commission not later than 5:00 p.m., August 20, 1968, to incorporate the provisions as set forth in Appendix "A" hereto attached and made a part hereof.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. P-100, SUB 20
Intrastate Telephone Toll Rates

APPENDIX "A"

(1) Day Rates. Change day station and person toll rates from 4:30 a.m. - 6:00 p.m. to 7:00 a.m. - 5:00 p.m., Monday through Friday.

(2) Evening Station Rates. Change from 6:00 p.m. - 8:00 p.m. to 5:00 p.m. - 7:00 p.m., Monday through Friday. Eliminate Saturday from Evening Station Rates.

(3) Night Station Rates. Change from 8:00 p.m. - 4:30 a.m., Monday through Friday and all Sunday, to 7:00 p.m. - 7:00 a.m., Monday through Friday and all day Saturday and Sunday.

(4) Night Person Rates. Change from 6:00 p.m. - 4:30 a.m., Monday through Friday and all day on Sunday, to 5:00 p.m. - 7:00 a.m., Monday through Friday and all day Saturday and Sunday.

(5) Station Late Night Rates. Establish station late night rates effective every day, 12:00 Midnight - 7:00 a.m. on sent paid calls dialed from a business or residence telephone or calls placed from such telephones with an operator where facilities are not available for dial completion using the following mileage brackets and rates:

0 - 10 miles	$ .20
11 - 16 miles	.25
17 - 22 miles	.30
23 - 30 miles	.35
31 - 40 miles	.40
41 - 55 miles	.40
56 - 85 miles	.45
86 - 544 miles	.45

(6) Holiday Rates. Make night station and person rates provided in (3) and (4) effective all day on Thanksgiving, Christmas, New Years, July 4th, and Labor Day holidays, except for hours late night rates are applicable as provided in (5).

(7) Establish following toll mileage brackets and associated charges in lieu of present brackets and charges:

MILES	S-D	S-E	S-N	P-D	P-N
0 - 10	.20	.20	.20	.40	.40
11 - 16	.25	.25	.25	.50	.50
17 - 22	.30	.30	.30	.60	.60
23 - 30	.35	.35	.35	.65	.65
31 - 40	.40	.40	.40	.75	.75
41 - 55	.45	.40	.40	.85	.80
56 - 85	.50	.45	.45	.95	.85
431 - 506	1.20	.85	.60	1.85	1.55
507 - 544	1.30	.90	.60	1.95	1.65

DOCKET NO. P-100, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Adjustment in Uniform Intrastate Toll) CORRECTIVE
Rate Hours, Days, and Mileage Brackets) ORDER

BY THE COMMISSION: On July 26, 1968, order was issued in this cause directing that the intrastate message toll rate provisions as set forth in Appendix "A" attached to said order should apply to each telephone company operating under the jurisdiction of this Commission in the State of North Carolina on and after 12:01 a.m., August 31, 1968. It was intended by the Commission in the issuance of said order that the effective time of same would be 12:01 a.m., September 1, 1968, instead of the time designated in said order, and the Commission now desires to correct said clerical error.

IT IS, THEREFORE, ORDERED That the intrastate message toll rate provisions as set forth in Appendix "A" attached to said order dated July 26, 1968, shall apply to each telephone company operating under the jurisdiction of this Commission in the State of North Carolina on and after 12:01 a.m., September 1, 1968. Except as herein corrected and amended, said order shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. P-100, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Adjustment in Uniform Intrastate Toll Rate) AMENDED
Hours, Days, and Mileage Brackets) ORDER

BY THE COMMISSION: On July 26, 1968, order was issued in this cause directing that the intrastate message toll rate provisions as set forth in Appendix "A" attached to said order should apply to each telephone company operating under the jurisdiction of this Commission in the State of North Carolina on and after 12:01 a.m., August 31, 1968, which by later order was changed to 12:01 a.m., September 1, 1968.

Since the issuance of the above-mentioned order, it has come to the Commission's attention that in the establishment of the new interstate rates effective August 1, 1968, the two intrastate mileage brackets 431-506 and 507-544 have been combined into one new mileage bracket. For uniformity, the Commission desires this same change be made in the intrastate schedules at the rates for the 431-506 mileage bracket as set out in Appendix "A" attached to the July 26, 1968 order, the revenue effect of which will be nil.

IT IS, THEREFORE, ORDERED That the intrastate message toll rate provisions as set forth in Appendix "A" attached to said order dated July 26, 1968, be amended to combine the mileage brackets 431-506 and 507-544 into one bracket, 431,544, which shall carry the rates for the 431-506 mileage bracket as set forth in Appendix "A" of said order. Except as herein corrected and amended, said order shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation of Conditions of) GENERAL
Telephone Toll Operator Service) ORDER

BY THE COMMISSION: It appearing on information and belief that telephone operator answering time, particularly on person-to-person toll calls and to some extent on direct distance dialing, information, and service calls, is abnormally high in a number of telephone companies and may be a general condition throughout the telephone industry; and

It further appearing that said condition, if general, may be attributable to a single cause or combination of causes in the telephone industry in the State; and

It further appearing that the Commission should fully inform itself upon, and make thorough review of, the extent to which said problems exist, the probable cause or causes thereof, and determine what actions, if any, should be taken by the several telephone companies of the State and the Commission; and

It further appearing that all telephone companies in the State should report upon and inform the Commission on the aforesaid subject substantially as provided in Appendix "A" attached hereto and incorporated;

IT IS ORDERED:

1. That each telephone company in the State shall within thirty (30) days following the date this Order issues report in writing to the Commission on the nature, extent, and quality of its operator service.

2. The aforesaid report shall cover, but is not limited to, the items set forth in Appendix "A" attached and incorporated.

3. Those telephone companies whose operator service is provided by another shall give the terms and conditions of its agreement with the company providing the service and shall give an evaluation of the quality of service being so provided. If such evaluation is critical, said reporting company shall give the Commission its recommendations on how the company providing the service could improve it.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

APPENDIX "A"

1. The number of operator positions and the number of operators required to adequately fill these positions.

2. The number of operators presently employed.

3. The company's operator answer time objectives.

4. The results of recent operator answer time studies indicating the average speed of answer, if available, and the percentage of calls which exceeded the company's answer time objective.

5. The method of making the answer time study. For example, regular answer time recorder, modified answer time recorder or stop watch.

6. A brief outline of training programs for operators.

7. The extent to which part-time and seasonal operators are used.

DOCKET NO. R-100, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Conditions of Rail Trackage Within the State of North Carolina in its Relation to Safety of Operation of Railroads in North Carolina	)	ORDER OF INVESTIGATION OF RAIL TRACK CONDITIONS

BY THE COMMISSION: Based upon the Commission's study and review of train accident reports filed by the railroads operating in North Carolina and the statistics of railroad accidents attributed to track conditions, the Commission is of the opinion that a general investigation should be made into the condition of rail trackage within North Carolina as it affects the safety of operations of railroads in North Carolina. Reports of accidents attributed to derailments and track conditions such as broken rails, broken or spread joints in rails, worn or broken switch points, switch points not fitting up, defective switches, track irregularities or out of level, weak ties, unstable roadbed, worn rails, low rail joints, and variations in track elevation all indicate the necessity of such investigation to determine the condition of the rail trackage located in North Carolina.

The twenty-seven railroad companies operating over tracks in North Carolina have a total trackage in North Carolina, as of October 31, 1966, of 4,465 miles, including main line track and branch line track, but exclusive of yard tracks and spurs. The Commission's examination of railroad operations discloses that the railroads have increased the motive power of rail engines and have coordinated the make-up of through trains in such a manner that longer trains are now being operated by the railroads than in former years. Further, information to the Commission of new railroad equipment discloses that new freight cars includes cars with greater weight capacity than in former years, with the general result that many trains include a greater number of cars of greater weight capacity than in former years, to the extent that investigation is justified into the relation between such longer trains and heavier cars and the wear and tear and maintenance of rail trackage, and to the safe conditions of such trackage. The Commission deems that the continued safe operation of trains requires maximum maintenance of trackage in North Carolina and frequent and periodic inspection of the condition of such trackage for safe operation of such trains.

The Commission, through its authority under G.S. 62-41 and G.S. 62-235, deems it necessary in the public interest to

institute a general investigation of the condition of rail trackage in North Carolina in the furtherance of its program of accident prevention and public safety in the operation of railroads in North Carolina.

IT IS, THEREFORE, ORDERED as follows:

1. That an investigation is hereby instituted into the safe condition of the rail trackage operated within North Carolina by all railroad companies doing business in North Carolina.

2. The twenty-seven railroad companies doing business in North Carolina, as shown in the attached Appendix A are hereby made respondents in this rail trackage investigation.

3. All railroad company respondents are hereby ordered to make a complete inspection of all trackage operated in North Carolina by said railroads and to file a report with this Commission of the results of such inspection not later than July 15, 1968.

4. The reports hereby required to be filed on or before July 15, 1968, shall be duly verified by a responsible officer of each railroad company operating in North Carolina and shall include, among other findings from said investigation, the following:

(a) The general condition of all rail track mileage operated by said railroad in North Carolina with specific condition reports for each major section, division, segment, or group of mileage blocks reported for maintenance purposes by said railroad, showing the weight of rail, age of rail and ties, date of last major improvement, number of defects, and number of trains operated daily over said tracks, with the average number of weight of cars in said trains.

(b) A report of all restrictions or limitations on any track location in North Carolina, such as slow orders, speed restrictions or weight limitations based upon the track conditions in North Carolina.

(c) A statement of the frequency of track inspections in North Carolina, including a statement of the method used for such inspections and the procedure for remedying any defects disclosed by such inspections.

(d) A report of the maintenance program of each railroad, including the personnel assigned to maintenance work, the responsible official in charge of such maintenance work for the various segments of track in North Carolina, and the equipment devoted to maintenance of trackage in North Carolina.

5. All rail respondents will further report to the Commission a tabulation for the years 1957 through 1967 on an annual basis, all accidents incurred in North Carolina

attributed to track conditions, the location and cause of such accidents, the number of persons injured or killed, the amount of property damage resulting from said accidents, the number of employees assigned to track maintenance for each year, and the extent of equipment assigned to track maintenance for each year.

ISSUED BY ORDER OF THE COMMISSION.

This 9th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

Appendix A

LIST OF RAILROAD COMPANY RESPONDENTS

Aberdeen and Rockfish Railroad Company
Aberdeen, N. C.

Alexander Railroad
Taylorsville, N. C.

Atlantic and East Carolina Railway Company
Washington, D. C.

Atlantic and Western Railway Company
Sanford, N. C.

Beaufort and Morehead Railroad Company
Beaufort, N. C.

Camp Lejeune Railroad Company
Washington, D. C.

Cape Fear Railways, Incorporated
Fort Bragg, N. C.

Carolina and Northwestern Railway Company
Washington, D. C.

Cliffside Railroad Company
Cliffside, N. C.

Clinchfield Railroad Company
Erwin, Tennessee

Durham and Southern Railway Company
Durham, N. C.

Graham County Railroad Company
Asheville, N. C.

High Point, Thomasville & Denton Railroad Company
High Point, N. C.

Laurinburg and Southern Railroad Company
Laurinburg, N. C.

Louisville and Nashville Railroad Company
Louisville, Kentucky

Norfolk and Western Railway Company
Roanoke, Virginia

Norfolk, Franklin and Danville Railway Company
Suffolk, Virginia

Norfolk Southern Railway Company
Raleigh, N. C.

Piedmont and Northern Railway Company
Charlotte, N. C.

Rockingham Railroad Company
Rockingham, N. C.

Seaboard Coast Line Railroad Company
Jacksonville, Florida

Southern Railway Company
Washington, D. C.

State University Railroad Company
Washington, D. C.

Virginia and Carolina Southern Railroad Company
Lumberton, N. C.

Warrenton Rail Road Company
Warrenton, N. C.

Winston-Salem Southbound Railway Company
Winston-Salem, N. C.

Yancey Railroad Company
Burnsville, N. C.

DOCKET NO. E-2, SUB 167

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Certificate of Public Convenience and Necessity, Pursuant to G.S. 62-110.1, Authorizing Construction of Additional Generating Facilities at its L.V. Sutton Steam Electric Generating Plant, in New Hanover County, North Carolina	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

BY THE COMMISSION: This proceeding was instituted on September 24, 1968, by the filing of an application by Carolina Power & Light Company for a Certificate of Public Convenience and Necessity under G.S. 62-110.1 to construct additional generating capacity as set forth in the application. By Order of the Commission issued September 27, 1968, a Notice to Public was issued herein, which notice has been duly published once a week for four successive weeks in the Wilmington Star News, a daily newspaper of general circulation in New Hanover County, North Carolina, as required by G.S. 62-82, as appears from the Affidavit of Publication now filed in this cause. No complaints or written protest to the granting of the Application of Carolina Power & Light Company ("Company") for a Certificate of Public Convenience and Necessity to construct additional electric generating facilities at its L.V. Sutton Steam Electric Generating Plant, near Wilmington, in New Hanover County, North Carolina, having been filed within the time specified in such notice, the Application has been considered and determined on the basis of the verified representations in the Application and the public records on file with the Commission.

From the verified Application and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. The Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 336 Fayetteville Street, Raleigh, North Carolina, and is a public utility operating in North Carolina and South Carolina, where it is engaged in generating, transmitting, delivering and furnishing electricity to the public for compensation.

2. As of August 31, 1968, the Company owned and operated seven steam electric generating plants with a net capability, including internal combustion turbine generators, of 2,780,000 KW and four hydroelectric generating plants with a new capability of 213,500 KW; and it has under construction at its H.B. Robinson Steam Electric Generating Plant, near Hartsville, South Carolina,

an additional generating unit with initial capability of 663,000 KW, which is scheduled for completion in May 1970.

3. Including power available on a firm commitment basis, its total system capability as of August 31, 1968, was 2,907,800 KW, while its firm load peak demand had reached 2,834,800 KW prior to that date.

4. Among its interconnections, the Company's facilities are interconnected with those of Duke Power Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company, neighboring public utilities, with whom it has entered into an agreement for the pooling of bulk power generating and transmission facilities and their coordinated operation over wide geographic areas, the same being designated as Carolinas-Virginias Power Pool Agreement (CARVA Pool).

5. The Company needs and proposes to install promptly at its L.V. Sutton Steam Electric Generating Plant, near Wilmington, in New Hanover County, North Carolina, additional generating facilities of the internal combustion turbine generator type for its own use and as additional generating capacity of the CARVA Pool, which is the most economical type of generating equipment which it can provide for these purposes.

6. The Company has financial ability to pay for the construction and installation of the additional generating units, which are estimated to cost $5,150,000.

CONCLUSIONS

The Commission finds and concludes that public convenience and necessity require construction and installation by the Company of the additional generating facilities hereinafter described, in that (a) such facilities will be available to supply peaking power requirements on the Company's system; (b) they will serve as a part of the Company's reserve generating capacity; (c) they are the most economical and dependable type of generating capacity which the Company can provide immediately for those purposes; and (d) those facilities are required to maintain dependable electric service for Company's customers, and to provide its proportionate share of increased reserve generating capacity required in the operation of the CARVA Pool.

IT IS, THEREFORE, ORDERED that Carolina Power & Light Company be, and it hereby is, authorized to install and operate at its L.V. Sutton Steam Electric Generating Plant, near Wilmington, New Hanover County, North Carolina, the following described additional electric generating facilities:

Two internal combustion turbine generator units of 29,000 KW net capacity each to be located at the existing L.V. Sutton Steam Electric Plant near Wilmington, North

Carolina. Each unit and its auxiliary equipment will be installed on a concrete foundation at ground elevation and will be enclosed in a metal building, 102 feet long by 38 feet wide. An oil-to-air lubricating oil cooler, an oil-to-air seal oil cooler, a turbine air intake and exhaust silencer, and a water-to-air generator hydrogen cooler will be located outside the building and connected to the unit. Each generator will operate at 13.8 KV and will be connected to the existing plant 110 KV operating bus through a 13.8 KV/110 KV step-up transformer rated 44,000 KVA. The controls for operating the units will be inside the unit enclosure; however, facilities for remote control of the units from the steam plant control room will be installed. Fuel for the two units will be natural gas and No. 2 fuel oil. A storage tank for the fuel oil will be located near the existing steam plant fuel oil facilities. Gas will be piped from the existing gas company reducing metering station.

IT IS FURTHER ORDERED that this order constitute a Certificate of Public Convenience and Necessity for the installation and operation of these facilities.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 168

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Certificate of Public Convenience and Necessity, Pursuant to G.S. 62-110.1, Authorizing Construction of Additional Generating Facilities at its Cape Fear Steam Electric Generating Plant, in Chatham County, North Carolina	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

BY THE COMMISSION: This proceeding was instituted on September 24, 1968, by the filing of an application by Carolina Power & Light Company for a Certificate of Public Convenience and Necessity under G.S. 62-110.1 to construct additional generating capacity as set forth in the application. By Order of the Commission issued September 27, 1968, a Notice to Public was issued herein, which notice has been duly published once a week for four successive weeks in the Sanford Daily Herald, a daily newspaper of general circulation in Chatham County, North Carolina, as required by G.S. 62-82, as appears from the Affidavit of Publication now filed in this cause. No complaints or

written protest to the granting of the Application of Carolina Power & Light Company ("Company") for a Certificate of Public Convenience and Necessity to construct additional electric generating facilities at its Cape Fear Steam Electric Generating Plant, near Moncure, in Chatham County, North Carolina, having been filed within the time specified in such notice, the Application has been considered and determined on the basis of the verified representations in the Application and the public records on file with the Commission.

From the verified Application and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. The Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 336 Fayetteville Street, Raleigh, North Carolina, and is a public utility operating in North Carolina and South Carolina, where it is engaged in generating, transmitting, delivering and furnishing electricity to the public for compensation.

2. As of August 31, 1968, the Company owned and operated seven steam electric generating plants with a net capability, including internal combustion turbine generators, of 2,780,000 KW and four hydroelectric generating plants with a net capability of 213,500 KW; and it has under construction at its H.B. Robinson Steam Electric Generating Plant, near Hartsville, South Carolina, an additional generating unit with initial capability of 663,000 KW, which is scheduled for completion in May 1970.

3. Including power available on a firm commitment basis, its total system capability as of August 31, 1968, was 2,907,800 KW, while its firm load peak demand had reached 2,834,800 KW prior to that date.

4. Among its interconnections, the Company's facilities are interconnected with those of Duke Power Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company, neighboring public utilities, with whom it has entered into an agreement for the pooling of bulk power generating and transmission facilities and their coordinated operation over wide geographic areas, the same being designated as Carolinas-Virginias Power Pool Agreement (CARVA Pool).

5. The Company needs and proposes to install promptly at its Cape Fear Steam Electric Generating Plant, Moncure, in Chatham County, North Carolina, additional generating facilities of the internal combustion turbine generator type for its own use and as additional generating capacity of the CARVA Pool, which is the most economical type of generating equipment which it can provide for these purposes.

6. The Company has financial ability to pay for the construction and installation of the additional generating units, which are estimated to cost $5,970,000.

CONCLUSIONS

The Commission finds and concludes that public convenience and necessity require construction and installation by the Company of the additional generating facilities hereinafter described, in that (a) such facilities will provide standby generating capacity for the start up of the steam electric generating units at the Cape Fear Steam Electric Generating Plant, in the event of system outage; (b) they will be available to supply peaking power requirements on the Company's system; (c) they will serve as a part of the Company's reserve generating capacity; (d) they are the most economical and dependable type of generating capacity which the Company can provide immediately for those purposes; and (e) those facilities and two other generating facilities of the same type which the Company proposes to install at another location on its system are required to maintain dependable electric service for Company's customers, and to provide its proportionate share of increased reserve generating capacity required in the operation of the CARVA Pool.

IT IS, THEREFORE, ORDERED that Carolina Power & Light Company be, and it hereby is, authorized to install and operate at its Cape Fear Steam Electric Generating Plant, near Moncure, Chatham County, North Carolina, the following described additional electric generating facilities:

Four internal combustion turbine generator units of 17,000 KW net capacity each to be located at the existing Cape Fear S.E. Plant near Moncure, North Carolina. Each unit and its auxiliary equipment will be installed on a concrete foundation at ground elevation and will be enclosed in a metal building, 67.5 feet long by 16 feet 11 inches wide. A CO2 compartment for fire protection, a fuel forwarding skid and two 15 KV metal clad switchgear assemblies will be located outside of the buildings and connected to the units. The generators will operate at 13.8 KV and will be connected to the existing 110 KV operating bus through a 13.8 KV/110 KV step-up transformer rated 72,000 KVA. The controls for operating the turbine generators will be in a control house adjacent to the four units; however, facilities for remote control of the units from the steam plant control room will be installed. Initial fuel for the units will be No. 2 Fuel Oil, for which a storage tank will be provided near the existing steam plant fuel facilities.

IT IS FURTHER ORDERED that this order constitute a Certificate of Public Convenience and Necessity for the installation and operation of these facilities.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 169

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Certificate of Public Convenience and Necessity, Pursuant to G.S. 62-110.1, Authorizing Construction of a Steam Electric Generating Plant in Brunswick County, North Carolina	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

BY THE COMMISSION: This proceeding was instituted on October 25, 1968, by the filing of an Application by Carolina Power & Light Company for a Certificate of Public Convenience and Necessity under G.S. 62-110.1 to construct a steam electric generating plant as set forth in the Application. By Order of the Commission issued October 28, 1968, a Notice to Public was issued herein, which notice has been duly published once a week for four successive weeks in the Wilmington Morning Star, a daily newspaper of general circulation in Brunswick County, North Carolina, as required by G.S. 62-82, as appears from the Affidavit of Publication filed in this cause. No complaints or written protest to the granting of the Application of Carolina Power & Light Company ("Company") for a Certificate of Public Convenience and Necessity to construct a steam electric generating plant near Southport, in Brunswick County, North Carolina, having been filed within the time specified in such Notice, the Application has been considered and determined on the basis of the verified representations in the Application and the public records on file with the Commission.

From the verified Application and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. The Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 336 Fayetteville Street, Raleigh, North Carolina, and is a public utility operating in North Carolina and South Carolina, where it is engaged in generating, transmitting, delivering and furnishing electricity to the public for compensation.

2. As of August 31, 1968, the Company owned and operated seven steam electric generating plants with a net capability, including internal combustion turbine generators, of 2,780,000 KW and four hydroelectric

generating plants with a net capability of 2|3,500 KW. The Company has under construction at its H.B. Robinson Steam Electric Generating Plant, near Hartsville, South Carolina, an additional generating unit with initial capability of 663,000 KW, which is scheduled for completion in May |970.

3. Including power available on a firm commitment basis, its total system capability as of August 3|, |968, was 2,907,800 KW, while its firm load peak demand had reached 2,834,000 KW prior to that date.

4. Among its interconnections, the Company's facilities are interconnected with those of Duke Power Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company, neighboring public utilities, with whom it has entered into an agreement for the pooling of bulk power generating and transmission facilities and their coordinated operation over wide geographic areas, the same being designated as Carolinas-Virginias Power Pool Agreement (CARVA Pool).

5. The Company needs and proposes to construct at a site to be acquired near Southport, in Brunswich County, North Carolina, a steam electric generating plant consisting of two nuclear fueled turbine generator units to provide the capacity for the planned normal load growth of its system and as additional generating capacity for the CARVA Pool, which units are the most economical type of generating capacity that the Company can provide to supply the Company's base load requirements.

6. The Company has financial ability to pay for the construction and installation of the generating plant described in the preceding paragraph, which is estimated to cost $290,000,000.

CONCLUSIONS

The Commission finds and concludes that public convenience and necessity require construction by the Company of the steam electric generating plant hereinafter described, in that (a) such facility would provide the additional generating capacity to meet the estimated increased requirements of the Company's customers, (b) it is the most economical type of generating capacity which the Company can provide to operate at continuous maximum, or near maximum, capability to supply the Company's base load requirements, and (c) it is the type of generating facility which will best coordinate with the peaking generating facilities which the Company has installed and is planning to install in order to provide the most economical arrangement for power supply to the Company's customers and to provide its proportionate share of increased generating capacity required in operation of the CARVA Pool.

IT IS, THEREFORE, ORDERED that Carolina Power & Light Company be, and it is hereby, authorized to construct and

operate at a site to be acquired near Southport, in Brunswick County, North Carolina, the following described steam electric generating plant:

Two nuclear fueled turbine generator units of 821,000 KW net capability each. The nuclear steam supply will be of the boiling water type. The turbine generators will be indoor type, located in a building presently under design. The generator voltage will be transformed to 230,000 volts, at which the power will be delivered into the Company's transmission network.

IT IS FURTHER ORDERED that this Order constitute a Certificate of Public Convenience and Necessity for the construction and operation of these facilities.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. E-7, SUB 106

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company for Certificate of Public Convenience and Necessity under Chapter 287, 1965 Session Laws of North Carolina (G.S. 62-110.1) Authorizing Construction of Additional Generating Capacity at its Existing Dan River and Riverbend Steam-Electric Generating Stations	))))))	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

BY THE COMMISSION: This proceeding was instituted on September 11, 1968, by filing of an application by Duke Power Company ("Company" or "Applicant") for a Certificate of Public Convenience and Necessity under G.S. 62-110.1 and G.S. 62-82 to construct additional electric generating facilities at existing Dan River Station which is located near Eden, Rockingham County, North Carolina, and its Riverbend Station which is located near Mount Holly, Gaston County, North Carolina. The facilities are more particularly described in paragraph 5 of the Application. By Orders of the Commission issued September 16, 1968, public notices were issued herein, which notices were duly published once a week for four (4) successive weeks in The Reidsville Review and The Gastonia Gazette, both being daily newspapers of general circulation in Rockingham County, and Gaston County, North Carolina, respectively, as required by G.S. 62-82, as appears from the affidavits of Publication now filed in this cause. No complaint or written protest to

the granting of the Company's Application for a Certificate of Public Convenience and Necessity to construct said additional electric generating facilities having been filed within the time specified in such notices, the Application has been considered and determined on the basis of the verified Application and the public records on file with the Commission.

From the verified Application and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. The Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 422 South Church Street, Charlotte, North Carolina, and is a public utility operating in North Carolina and South Carolina, where it is engaged in generating, transmitting, distributing, and selling electric power and energy to the general public.

2. As of September 1, 1968, the Company owned and operated nine (9) thermal generating plants with a net capability of 4,208,510 kw and owned or leased thirty (30) hydroelectric generating plants with a net capability of 883,590 kw. It has under various stages of design and construction the following:

Station	Expected Capacity	Year of Scheduled Service
Marshall Steam Station Unit 3	682,000 kw	1969
Marshall Steam Station Unit 4	682,000 kw	1970
Keowee Hydro Station Units 1 & 2	140,000 kw	1971
Oconee Nuclear Station Unit 1	886,000 kw	1971
Oconee Nuclear Station Unit 2	886,000 kw	1972
Oconee Nuclear Station Unit 3	886,000 kw	1973
Jocassee Pumped-Storage Station Units 1 & 2	305,000 kw	1974

3. Including power available on a firm commitment basis, the Company's total system capability as of September 1, 1968, was 5,757,475 kw, while its firm load peak demand had reached 5,364,165 kw prior to that date.

4. The Company needs and proposes to construct one (1) combustion turbine-generator unit at its existing Dan River Steam Station and four (4) combustion turbine-generator units at its existing Riverbend Steam Station.

5. Recent upward revision of load forecasts makes it necessary that the Company install the additional generating capacity described in paragraph 5 of the application no later than the summer of 1969 in order to meet its anticipated load and maintain an adequate reserve margin of generating capacity. These combustion turbine-generator

units represent the most reliable and economical type of peaking capacity that can be brought into service in time to meet the projected load.

6. The installation at Dan River Station is presently estimated to cost $2.7 million or $92 per kw and the installation at the Riverbend Station is expected to cost $13.2 million or $91 per kw. The Company has financial ability to pay for the construction and installation of the additional generating units.

CONCLUSIONS

The Commission finds and concludes that public convenience and necessity require construction and installation by the Company of the additional generating capacity hereinafter described, in that (a) it will be available to supply peaking power requirements on the Company's system; (b) it will serve as a part of the Company's reserve generating capacity; (c) it is the most economical and dependable type of generating capacity which the Company can provide in time to meet its projected load; (d) each of the combustion turbine-generator units located at Riverbend is capable of starting without an external power source and is therefore able to provide starting power to other generating plants on Applicant's system; and (e) it is required to maintain adequate and dependable electric service for the Company's customers.

IT IS, THEREFORE, ORDERED:

1. That Duke Power Company be, and it hereby is, authorized to install and operate the following described additional electric generating facilities:

(a) One (1) combustion turbine-generator unit, with a nominal capacity of 29,000 kw net, to be located at the existing Dan River Steam Station, Eden, North Carolina. The unit and its auxiliary equipment will be installed on a concrete slab at ground level and housed in an insulated sheet metal building 102 feet long by 38 feet wide. A transformer for operating the auxiliaries and the main step-up transformer (rates 45 MVA), stepping the generated voltage of 13.8 kv up to the transmission voltage of 100 kv will be located outside the building. The unit will have all the controls for operation within its own building; however, it can be operated remotely from the steam plant control room. This unit will utilize as fuel either natural gas, #2 fuel oil, or the most economical combination of these fuels.

(b) Four (4) combustion turbine-generator units each with a nominal capacity of 36,000 kw net, to be located at the existing Riverbend Steam Station, Mount Holly, North Carolina. Each unit and its auxiliary equipment will be installed on a concrete slab at

ground level and housed in an insulated sheet metal building 62 feet long by 54 feet wide. The four units will be connected to a single main step-up transformer (rated 160 MVA), stepping the generated voltage of 13.8 kv up to the transmission voltage of 100 kv. Each unit will have operating controls within its own building and remote controls from the steam plant control room. These units will utilize as fuel the most economical combination of gaseous and liquid distillate fuels such as natural gas, LP gas, and #2 fuel oil.

2. That this Order constitutes a Certificate of Public Convenience and Necessity for the installation and operation of the above-described facilities.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 154

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Lumbee River Electric Membership Corporation, Red Springs, North Carolina, Complainant	)	
vs. Carolina Power & Light Company, Raleigh, North Carolina, Defendant	)	ORDER
and Acme Electric Corporation and Acme Electric Corporation of Lumberton, N. C., Intervenors	)	

BIGGS, COMMISSIONER: This is a proceeding before the North Carolina Utilities Commission brought by Lumbee River Electric Membership Corporation (Lumbee) complaining of certain actions by Carolina Power & Light Company (CP&L). The original pleading filed by Lumbee on October 6, 1967, consisted of both a Complaint which sought to restrain CP&L from rendering electric service to the plant site of Acme Electric Corporation (Acme) in Robeson County, and an Application for the assignment to it of a certain electric service area in Robeson County pursuant to G.S. 62-110.2(c)(1). Subsequently, however, after a formal conference with counsel for both CP&L and Lumbee, the Commission, under date of November 6, 1967, issued a Procedural Order and Notice declaring the Application for assignment of electric service area to be a separate action

which was severed from this docket and assigned another docket number (EC-5|, Sub 2). The present proceeding now comprises only the Complaint wherein Lumbee seeks an Order enjoining CP&L from rendering service from an electric line constructed by CP&L and seeks to require CP&L to take down and remove its electric line.

A hearing was commenced in this matter on December |2, |967, at which certain stipulations were submitted by the parties and certain statements of position and argument were made orally by the counsel for all parties. Based upon the stipulations and pleadings, counsel for CP&L, supported by Intervenor, Acme, moved that the Complaint of Lumbee be dismissed as a matter of law, contending that all of the matters in controversy, as defined by the pleadings and stipulations, should be decided as a matter of law without further evidence or showing. On March 4, |968, the Commission issued an Order denying the Motion of CP&L to dismiss the Complaint.

After the entry of the March 4 Order, the Commission on March 8, |968, heard oral argument to exceptions taken to the Recommended Order entered in the matter of Union Electric Membership Corporation vs. Duke Power Company, Docket No. E-7, Sub 99, in which proceeding CP&L and Virginia Electric and Power Company were permitted to appear as amicus curiae. After long and deliberate consideration of the exceptions in said Union-Duke matter, the Commission, on a divided vote, decided to sustain the exceptions taken to the Recommended Order in that matter and to dismiss the Complaint filed therein as a matter of law. The facts and circumstances of that case being substantially similar to those in this proceeding, the Commission decided to reconsider its ruling in this case as expressed in said March 4 Order, and on March 22, |968, the parties were so notified at an informal conference. The pleadings and the stipulations and statements of counsel herein were carefully reviewed, and it was felt by a majority of the Commission that the ruling in said March 4, |968, Order should be reversed and that the Motion of CP&L to dismiss the Complaint in this action should be allowed.

FINDINGS CF FACT

The Commission bases its decision to allow the Motion and to dismiss this action upon Findings of Fact based upon the uncontroverted allegations of the pleadings, the stipulations, and admissions of record herein, as follows:

|. Complainant, Lumbee River Electric Membership Corporation, with principal offices in Red Springs, North Carolina, is a duly organized and existing nonprofit electric membership corporation, organized and existing pursuant to Chapter ||7 of the General Statutes of North Carolina, and is engaged in supplying electricity at retail to its members in and near Robeson County and other counties

pursuant to said law and to Article 6 of Chapter 62 of the General Statutes.

2. Defendant, Carolina Power & Light Company, with headquarters in Raleigh, North Carolina, is a duly organized and existing corporation and public utility engaged in generation, transmission, distribution and general sale of electricity in large areas of North Carolina and in Robeson County pursuant to Chapter 62 of the General Statutes of North Carolina.

3. Lumbee is a wholesale customer of CP&L, taking from CP&L some 56,657,254 kwh of its total requirement of 62,680,200 kwh in 1966 at a total cost of $408,630. The remainder of 6,022,946 kwh was delivered to Lumbee by and through the facilities of CP&L for and on account of Southeastern Power Administration.

4. Both Complainant and Defendant are electric suppliers as defined in G.S. 62-110.2(a)(3). No service areas have been assigned in Robeson County as between Complainant and Defendant pursuant to G.S. 62-110.2(c)(1).

5. Intervenor, Acme Electric Corporation, is incorporated under the laws of the State of New York, having its principal office and place of business in Cuba, New York, has been authorized to transact business in North Carolina, and is engaged in the business of producing, manufacturing and distributing various types of electrical equipment. Acme Electric Corporation of Lumberton, N. C. (Acme of Lumberton), is incorporated under the laws of North Carolina, having its principal office and place of business in Lumberton, North Carolina, and is the wholly owned subsidiary of Acme.

6. Acme, for the purpose of building a manufacturing plant, selected and acquired a site southwest of Lumberton, North Carolina, near the southeastern quadrant of the intersection of U. S. Highway I-95 and U. S. Highway 74 (also known as SR 2208), which site contained about 36 acres. Acme caused the eastern portion of this tract, consisting of approximately 20 acres, to be conveyed to its wholly owned subsidiary corporation, Acme of Lumberton, which subsidiary corporation is having constructed a large manufacturing plant facility consisting of approximately 60,000 square feet on this site. Acme will lease the property from Acme of Lumberton and electric service will be in the name of Acme.

7. The CP&L three-phase extension along Highway 74 (SR 2208), about which Lumbee has complained, was generally constructed about 15 feet or less inside the N. C. State Highway right-of-way for said highway, but crosses said highway in four locations. This CP&L three-phase extension consists of 19,190 feet (3.63 miles) of new construction and 3,168 feet (0.6 miles) of conversion of single-phase line to three-phase line. The existing Lumbee three-phase line

along the opposite side of Highway 74 (SR 2208) has been built so that it is not located closer than one foot to said highway right-of-way, except that, not counting taps therefrom, it crosses said highway at two different locations. The right-of-way held by the State Highway Commission for said Highway 74 (SR 2208) is 150 feet in width. Lumbee also has an existing three-phase line along U. S. Highway I-95, as the same passes the Acme plant site, which is located on the northern side of said Highway I-95 opposite the Acme plant site, and a single-phase tap line therefrom has extended across said highway onto said plant site. The CP&L line along Highway 74 (SR 2208) has been constructed within the highway right-of-way pursuant to an agreement between CP&L and the State Highway Commission. Also, certain facilities of both parties, as just described, are by stipulation accurately shown on the drawing marked Exhibit S-2 which is a part of the record herein.

8. The location and description of Acme's initial plant building and of planned first and second stage expansions thereof, and its proximity to U.S. Highway I-95 and to the existing Lumbee single-phase line on the Acme track and to the recently constructed CP&L three-phase line to the premises, are all by stipulations as shown on the drawing marked Exhibit S-3 which is a part of the record herein.

9. Acme has chosen CP&L as its electric supplier, and on or about August 15, 1967, Acme entered into a contract with CP&L for supplying Acme's industrial electric load requirements of three-phase, 4-wire, electric service of approximately 60 cycles frequency and at approximately 277/480 volts, with an initial electric demand of 510 KW.

10. The plant now being erected on the property, as shown on Exhibit S-3 of record, is 240 feet long, running from north to south, and is not wholly within 300 feet of the existing single-phase Lumbee line, but only partially within 300 feet of said line, and this plant extends 62 feet beyond the 300-foot boundary of the Lumbee line on the east end of the plant and 15 feet beyond the 300-foot boundary on the west end of the plant.

11. Dickerson, Incorporated, of Monroe, North Carolina, is presently constructing the plant under contract, and Dickerson has requested and obtained three-phase electric service from CP&L, and is now receiving such electric service from the CP&L line constructed to the Acme plant site.

12. Lumbee does not allege, and counsel for Lumbee conceded that it does not propose to show, that CP&L will not make a profit or earn a return on the facilities constructed by it to furnish electric service to the Acme premises.

CONCLUSIONS

There is no question but that under G.S. 62-110.2(b)(5), CP&L has the right to provide electric service to the Acme plant or "premises" in this case. The force and effect of the stipulations of the parties and of the Findings of Fact by the Commission is that such premises required electric service after April 20, 1965; that the premises are not located wholly within 300 feet of the lines of any electric supplier or wholly within 300 feet of two or more suppliers; that the consumer (Acme) at the premises has chosen to be served by CP&L; and that the premises to be served are not located within an area that has been assigned under G.S. 62-110.2(c)(1). Under these circumstances, the right of CP&L to serve said premises is firmly established under G.S. 62-110.2(b)(5), which reads as follows:

> "(5) Any premises initially requiring electric service after April 20, 1965 which are not located wholly within 300 feet of the lines of any electric supplier and are not located partially within 300 feet of the lines of two or more electric suppliers may be served by any electric supplier which the consumer chooses, unless such premises are located wholly or partially within an area assigned to an electric supplier pursuant to subsection (c) hereof, and any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises."

Lumbee asserts that it is entitled to have the CP&L electric service to the Acme premises discontinued and the newly constructed CP&L line removed because such facility is allegedly duplicative of existing Lumbee electric line facilities in the area. Under the pleadings and stipulations and the foregoing Findings of Fact based thereon, however, we are constrained to hold that whether or not there may be duplication is not an issue in this proceeding, and that even if duplication should exist it would not deprive the consumer of its statutory right to choose its electric supplier or deprive CP&L of its statutory right to serve.

Lumbee further contends that the alleged duplication by the CP&L extension is uneconomical and wasteful, and if repeated at other locations such would be adverse to Lumbee as a ratepayer. The asserted economic waste, however, would allegedly result simply from the duplication of Lumbee's facilities. It is not alleged that the CP&L extension is an unprofitable investment, and counsel conceded that Lumbee is "not prepared to offer evidence that the Company won't make money on this extension". (Transcript of Testimony, Argument on Motion, heard December 12, 1967, p. 57) This further contention is not a proper basis for Lumbee to seek to enjoin the CP&L extension and service to the Acme premises which Acme is entitled to choose and CP&L to serve under G.S. 62-110.2(b)(5).

This matter involves portions of the comprehensive legislation enacted by the 1965 General Assembly in Chapter 287 of the 1965 Session Laws regulating the rights of "electric suppliers", that is, electric public utility companies and rural electric membership corporations, to provide service and establishing the rights of consumers to select and obtain electric service from the electric suppliers of their choice.

Before the enactment of the 1965 legislation, the relative rights and duties of public utilities and electric membership corporations were governed by contracts filed with this Commission. These contracts were the subject of profuse litigation and controversy. Blue Ridge Electric Membership Corp. vs. Duke Power Co., 258 N.C. 278 (1962).

Chapter 287, Session Laws of 1965, superseded the territorial provisions of these contracts and established the present legislative policy in this regard. This legislation appears to have been intended to put an end to the multiplicity of suits and controversies arising before its enactment. One intent of the Legislature was for this Commission to assign to one supplier or another, upon a finding of public convenience and necessity, those areas of the State outside municipal limits and more than 300 feet from the lines of any supplier on the date of assignment. G.S. 62-110.2(c)(1). The area in the present controversy has not been assigned.

Pending assignment, the Legislature through other provisions of Chapter 287 set out specific guidelines for electric suppliers and the public. G.S. 62-110.2(b)(5) is such a provision. Once areas have been assigned in Robeson County, and other counties, this subsection (b)(5) will have application only to those areas which are designated as "unassigned". Under the language of G.S. 62-110.2(b)(5), it is abundantly clear that the Legislature intended that, pending assignment of an area to any one electric supplier, a consumer requiring electric service to premises not wholly and exclusively within 300 feet of any existing supplier's lines has its choice of available suppliers, and the chosen supplier has the right to serve such consumer, regardless of whether or not there may be some duplication of facilities. Furthermore, as specifically stated in the final clause of the statute, "any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises".

As we see it, G.S. 62-110.2 sought both:

(a) To provide for the assignment of service areas to the various electric suppliers in the State, which are outside municipal limits and are more than 300 feet from the lines of all suppliers as such lines exist on the dates of assignment;

(b) To prescribe a set of rules for determining which electric supplier will provide electric service in unassigned areas prior to the time of assignment and in areas left unassigned for reasons specified in the Act.

The avoidance of "unnecessary duplication" is an object of the Act. Not all duplication of electric facilities is unnecessary or avoidable. As set forth in G.S. 62-110.2(c)(1), the avoidance of "unnecessary duplication" is to be accomplished by the assignment of service areas based upon a finding of public convenience and necessity in a proper case. Prior to the assignment of such areas, the rules prescribed elsewhere in subsection (b) were intended to cover service rights in the interim between the date of the enactment and the assignment of areas by the Commission and in areas which may be designated as unassigned. To otherwise interpret the Act might well produce the following results:

(1) Members of the public and electric suppliers would have no way to determine their service rights under the 1965 Act, pending assignment of service areas.

(2) Controversies between cooperatives and power companies may be multiplied manyfold and the purpose of the General Assembly to end such controversies pending assignment would be completely defeated.

(3) Electric suppliers would be able to extend service to new customers only at their peril where facilities of other suppliers exist in the area, with the possible result that virtually every such extension would have to be approved or disapproved by the Commission or the Courts.

The 1965 Act makes it clear that prior to the assignment of service areas by the Commission the only territorial protection afforded to the electric supplier is in those areas lying wholly and exclusively within 300 feet of existing electric lines. Unassigned areas lying more than 300 feet beyond such lines are not protected. To hold that an electric supplier cannot extend its lines to premises lying more than 300 feet from, or not wholly and exclusively within 300 feet of, the line of another supplier for the reason that the other supplier has such facilities in the area that would be duplicated by the line thus extended, would be equivalent to extending the territorial protection beyond that specified in the statute, and the right to receive and provide electric service would become uncertain and the expressed legislative intent would be defeated.

Even assuming for the sake of argument that the new CP&L line may duplicate certain of the Lumbee facilities in the area, it is clear that such duplication should not afford a basis for denying Acme the right to choose its electric supplier under G.S. 62-110.2(b)(5) or for requiring CP&L to remove its line. G.S. 62-110.2(b) obviously intended to eliminate controversies as to which electric supplier will

provide service in unassigned areas where the premises to be served do not lie, wholly or entirely, within 300 feet of the line of one supplier. It is not necessary here to determine whether or not there may be duplication, nor to determine whether or not such duplication might be "unnecessary", and we do not believe that the Commission should seek to enjoin a supplier from providing service under G.S. 62-110.2(b)(5) merely because the lines constructed to provide such service may allegedly duplicate the facilities of another supplier in the area. To otherwise hold would be equivalent to engrafting upon this legislation restrictions and conditions which would render vague and indefinite the right of the public to choose its electric supplier and the right of the supplier to provide service in unassigned areas.

IT IS, THEREFORE, ORDERED that the Order entered in this cause on March 4, 1968, be and the same is hereby vacated and set aside, and IT IS FURTHER ORDERED that the Motion of Carolina Power & Light Company and Acme Electric Corporation to dismiss the Complaint herein, made at the hearing in this cause on December 12, 1967, be and the same is hereby allowed and the Complaint is hereby dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 154
Lumbee River Electric Membership Corporation
vs.
Carolina Power & Light Company

ELLER, COMMISSIONER, DISSENTING: The question of law here is the same as in Union EMC v. Duke, Docket No. E-7, Sub 99, and in a number of complaint proceedings now pending. Each of these complaint proceedings was brought by electric cooperatives against various electric utilities alleging that the electric utility in specific instances was constructing its facilities in such a way as to constitute unnecessary, uneconomic, and wasteful duplication of the cooperatives' electric facilities.

While somewhat more equivocably stated than in the majority order in the Union case, the majority order here answers the question of law the same, viz:

> Where premises are located in areas not yet assigned by the Commission and are not wholly within 300 feet of the lines of another supplier, the consumer has an absolute right to choose any supplier, and the supplier so chosen then has the absolute right to serve the premises, no matter how far he builds his lines to do so and no matter

whose lines he duplicates nor to what extent he duplicates other suppliers' facilities in doing so. The Utilities Commission in such cases has jurisdiction only to find three facts: (a) that it has not assigned the area, (b) that the point of service in question is not wholly within 300 feet of another suppliers' lines, and (c) that the defendant is chosen by the person requesting service.

Unfortunately for the logic of the case, the majority does not consider the duty of the chosen supplier to serve, only his right. Obviously, however, under the majority order the "absolute" right of election by the consumer and the "absolute" right to serve, does not carry with it the absolute duty to serve, for the majority refers to "profit" and "return" on the project indicating that if the complainant or the defendant could show that the chosen supplier could not make a profit by serving a specific elector, then the customer would not have an absolute choice, the supplier would not have an absolute duty to serve and the Commission would have jurisdiction to prevent, or release, the supplier from serving. Thus, the Commission can save a chosen supplier from an unprofitable specific project, but cannot prevent the waste of both suppliers resources resulting from duplication of facilities, however extreme the duplication may be.

Since this ruling is made on motion to dismiss as a matter of law, we have not heard the evidence which both complainant and defendant would have presented bearing on the issue of economic waste resulting from unnecessary duplication as alleged and answered in the pleadings. It should be emphasized, therefore, that being foreclosed from hearing the evidence on the question, we can make no finding here as to whether Carolina Power & Light Company's construction actually constitutes unnecessary duplication of Lumbee's facilities resulting in economic waste and I do not express an opinion in that respect. My basic position is that complainant is entitled to introduce evidence in support of its unstricken allegations, defendant is entitled through evidence to rebutt it, and the Commission is authorized and required to make findings and conclusions and to act thereon.

The majority refuses to hear the evidence in support of and against complainant's allegations and now says that evidence of economic waste resulting from duplication of facilities is legally immaterial. In so doing, the majority adopts a principle contrary to recognized and well-known regulatory principles and literally deprives the cooperatives of a forum for redress of their grievances in this and the other complaints already filed. It disclaims any responsibility or authority to prevent unnecessary duplication pending assignment of territories, thus tending to add to the appalling amount of duplication which existed before the Act of 1965, which trend I believe the Act was intended to curb.

Prior to the 1965 Act, the cooperatives had the protection of the so-called "300-foot rule" in their wholesale power contracts and both the Courts and this Commission had been forums on the question of duplication. Now, cooperatives will have neither their contractual protection against territorial encroachment from the financially superior electric utilities nor the forums heretofore available to them. Under this ruling, the Utilities Commission has the authority to regulate the territory, service, and - to a large extent - the rates of cooperatives, but not the authority to protect them or even hear them on their complaints of destructive competition and economic waste through duplication of their facilities in unassigned areas not wholly within 300 feet of their lines.

The immediately arising answer to my position is that the rule here applies only until all areas of the State are assigned between cooperatives and electric utilities and, after all, the General Assembly directed the Commission to assign all such areas "as soon as practicable after January 1, 1966." This is small consolation, for, although we have assigned a substantial number of areas by agreement of the suppliers, we have not yet made the first assignment of territory in controverted areas. Nor have we published a single policy guideline for territorial assignment. Further, it must be observed that the cooperative applied for the territory covering the site involved in this case and, as the majority says, we severed that portion of the pleadings and have not yet set it for hearing.

The ruling here drastically effects later assignment proceedings, when and if reached, in two ways:

(1) Under this ruling, a supplier may build miles and miles of line, however circuitous, however duplicative of the facilities of others, and however close to the lines of others and for any purpose whatsoever so long as the result is to serve one premise at the end of the line which is not wholly within 300 feet of the lines of another supplier. The constructing supplier then has acquired a 600 foot protected corridor along that line in later assignment proceedings. [G.S. 62-100.2(c)(1)]. Thus, in addition to the customer incidentally acquired and the wasteful duplication fostered, the supplier has pre-empted a territory without having it assigned by the Commission;

(2) Under another section of the statute [G.S. 62-110.2(b)(4)], the constructing supplier as in (1) above acquires the absolute right to serve anyone within 300 feet of such line notwithstanding that the line as constructed may all be within 300 feet of another supplier's lines except for the terminal premises. Thus, under this ruling, an existing supplier can be deprived of a large number of customers within 300 feet of his lines - customers it theretofore had every assurance of serving under G.S. 62-110.2(b)(2) and, having such assurance, had

based its financing and installed its plant in contemplation of serving the area.

Since the majority disclaims any responsibility for inquiring into the reasonableness of the consumer's choice of suppliers, a financially superior supplier can obtain a customer practically anywhere in unassigned territory, get him to "choose" it, and proceed to construct to that "premises" and by building a house of one statutory block on another statutory block acquire territory it could not have acquired any other way, thereby actually depriving the other supplier of customers in areas well within 300 feet of that supplier's lines. Whether the statutory rules are "interim" or not, the foregoing possibilities illustrate that the ruling here does not interpret the Act in terms of its overall reasonableness, but actually destroys its reasonableness.

Another indication of the unreasonableness and, I believe, unconstitutionality, of the majority's interpretation of the Act may be found in the unbridled authority given consumers in choosing suppliers. I have no reason to doubt the bona fides of Acme's choice in this case, but among the cases controlled by this ruling there are instances subject to doubt. Union v. Duke, supra, where a developer made no distinction between the service of the chosen and the unchosen, but was influenced exclusively by the $200 per lot value of inducements offered him by the electric utility, is a case in point. Where a consumer is permitted this "unrestricted" right of choice he, and not the Utilities Commission, becomes the regulator of the utility. This withdraws the State's police power over utilities having the power of eminent domain from the Utilities Commission and places it in the hands of private persons, an unreasonable as well as unconstitutional result.

The majority, at page 9 of its order, seems to conclude that its ruling will give members of the public and electric suppliers a simplistic way to determine service right spending assignments. I agree that it will do so, but in simplest terms, it does so by declaring that the cooperatives have no such rights. The majority also supposes that its ruling will end controversies between electric utilities and cooperatives. I can see that the ruling will eliminate much of the work of the Commission in the controversies, but the actual controversies predictably will become ever more bitter and greater in the wake of this one-sided construction. The majority further concludes that, absent its ruling, electric suppliers would be able "...to extend service to new customers only at their peril where facilities of other suppliers exist in the area, with the possible result that virtually every such extension would have to be approved or disapproved by the Commission or the Courts." To this I can only say that every extension of service by electric suppliers should be subject to approval or disapproval by the Commission or the Courts. Perhaps the greatest inequity of the majority order is that

it renders these extensions subject neither to the supervision of the Commission nor the Courts.

The majority's fear that every extension would become the subject of litigation is needless. All we have needed to do before or now to prevent litigation of this type is publish reasonable guidelines and criteria for the handling of such matters.

Thomas R. Eller, Jr., Commissioner

DOCKET NO. E-2, SUB 154
Lumbee River Electric Membership Corporation
vs.
Carolina Power & Light Company

McDEVITT, COMMISSIONER, DISSENTING: I do not agree with the majority order which dismisses the complaint of Lumbee River Electric Membership Corporation on motions of the defendant, Carolina Power & Light Company, without hearing all of the evidence. The real issue in this matter is not whether the defendant has the right to serve Acme Electric Corporation but whether the Commission has the power, duty, and responsibility to investigate and fully probe all circumstances before making its decision in accordance with the entire body of public utility law.

John W. McDevitt, Commissioner

DOCKET NO. E-7, SUB 99

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Union Electric Membership Corporation, Complainant	)	
vs.	)	
Duke Power Company, Defendant	)	ORDER
Carolina Power and Light Company and Virginia Electric and Power Company, Amicus Curiae	)	

HEARD IN: The Hearing Room of the Commission at its Temporary Offices in the Old YMCA Building, Edenton and Wilmington Streets, Raleigh, North Carolina, on August 15 and 16, 1967

BEFORE: Commissioners Sam O. Worthington, John W. McDevitt and Thomas R. Eller, Jr. (Presiding)

APPEARANCES:

For the Complainant:

William T. Crisp and Hugh A. Wells
Crisp, Twiggs & Wells

Attorneys at Law
900 First Citizens Bank Building
Raleigh, North Carolina

Richard S. Clark
Wilson, Clark & Huffman
Attorneys at Law
108 East Jefferson Street
Monroe, North Carolina

For the Defendant:

William I. Ward, Jr. and George W. Ferguson, Jr.
Attorneys at Law
422 South Church Street
Charlotte, North Carolina

For Amicus Curiae

For Carolina Power and Light Company:

Sherwood H. Smith, Jr.
Attorney at Law
Insurance Building
Raleigh, North Carolina

For Virginia Electric and Power Company:

Robert C. Howison, Jr.
Attorney at Law
Wachovia Bank Building
Raleigh, North Carolina

WILLIAMS, COMMISSIONER: This is a complaint action by Union Electric Membership Corporation (Union) against Duke Power Company (Duke) pursuant to G.S. 62-73 and Commission Rule R1-9.

The three commissioners listed in the caption heard these proceedings. Only two of these three were members of the Commission when the case was at issue for decision. The two remaining Hearing Commissioners issued a Recommended Order on November 21, 1967, pursuant to G.S. 62-76(b). The defendant duly filed exceptions to the Recommended Order on December 5, 1967 and requested opportunity for oral argument on said exceptions. On February 28, 1968, Virginia Electric and Power Company and Carolina Power and Light Company filed motions to appear as amicus curiae to argue and file briefs on the exceptions to the Recommended Order. The Commission allowed the motions to appear as Amicus Curiae and oral arguments on the exceptions to the Recommended Order were heard by the Full Commission on March 8, 1968.

By its complaint, Union contends, inter alia, that prior to April 1, 1967, Duke had served the area along State Road No. 2139, known as Griffith Road in Union County, south of the City of Monroe and north of Richardson Creek; that on or

about April 1, 1967, Duke began construction of new distribution facilities south along Griffith Road, crossing and paralleling complainant's distribution lines, which had been in the area since about 1939, and that Duke extended said facilities a distance of some 3700 feet for the purpose of serving a proposed housing development on the west side of Griffith Road; that said extension of facilities was made by Duke pursuant to a request by the owner and developer of said subdivision one, William L. Carter (Carter); that in so doing Duke unlawfully duplicated Union's facilities; that Duke induced Carter through unlawful and discriminatory concessions or rebates to choose Duke's service rather than Union's; and that such activities by Duke constituted a waste of investment and unnecessary operating expense to the detriment of complainant and all other rate payers of Duke.

By its answer Duke admits it constructed the new facilities that cross and parallel Union's facilities substantially as alleged in the complaint but denies that said construction was in any way unlawful, wasteful or unnecessary or the result of any unlawful inducement or concession to the customer Carter.

From the competent and material evidence of record, the Commission makes the following

FINDINGS OF FACT

1. Complainant, Union Electric Membership Corporation, with principal offices in Monroe, North Carolina, is a duly organized and existing non-profit electric membership corporation, organized and existing pursuant to Chapter 117 of the General Statutes of North Carolina, and is engaged in supplying electricity at retail to its members in and near Union County pursuant to said law and to Article 6 of Chapter 62 of the General Statutes.

2. Defendant, Duke Power Company, with headquarters in Charlotte, North Carolina, is a duly organized and existing corporation and public utility engaged in generation, transmission, distribution and general sale of electricity in large areas of North Carolina and in Union County pursuant to Chapter 62 of the General Statutes of North Carolina.

3. Union is a wholesale customer of Duke, taking from Duke some 66.9 million kwh of its total requirement of 79.6 million kwh in 1966 at a total cost of $476,107.00. This power is furnished Union at the rate provided in Duke's standard tariff schedules 11 and 11A on file with and approved by the Commission.

4. Both Complainant and Defendant are electric suppliers as defined in G.S. 62-110.2(a)(3). No service areas have been assigned in Union County as between Complainant and Defendant pursuant to G.S. 62-110.2.

5. In 1966, Carter acquired a tract of land fronting the west side of Griffith Road (S.R. 2139) in Union County about two miles south of the corporate limits of Monroe and about 2,000 feet south of Richardson Creek. Since 1939 and until the construction complained of, Union's facilities have been located on and along Griffith Road south of Richardson Creek and Duke's facilities were on and along the same road north of Richardson Creek. At the time Carter purchased the aforesaid tract and continuing to the present, Union's distribution line ran in a north-south direction along the eastern edge of Griffith Road opposite the road frontage of the tract. Union also had a line generally parallel to the tract's southern boundary line for a distance of about 250 feet averaging approximately 150 feet from said boundary line. There was no service on the tract itself when purchased. Union served a house on the property adjoining the tract on the south and a house on the property adjoining the tract on the north at the time of purchase. Duke's nearest facilities to the tract at purchase and until April, 1967, were some 3,400 feet north on the west side of Griffith Road.

6. Carter purchased the aforesaid tract for residential development purposes and beginning in December, 1966 began to clear and develop it, laying out and constructing an entry road in the approximate center of the tract and running generally east-west off of Griffith Road. The tract was subdivided into some thirty residential building lots. Carter had developed land and constructed homes thereon for sale in other areas which have been served by Duke. Before he began to develop the instant tract, Carter negotiated with Duke, and was also contacted by Union, on the provision of electric service to the area he was developing.

7. Duke gave Carter to understand that, as in other subdivisions developed by him and served by Duke, he would receive the following:

(a) Duke would furnish engineering assistance, advice and inspections relating to design and construction of the homes for minimum heat loss and locations of electric facilities in the subdivision generally and in the homes;

(b) Duke would install street lights along the median of the road in the subdivision at no cost to Carter, other than $1.60 per month per light, for which he would sign a long-term written contract.

(c) Duke would furnish a house power panel (on which are circuit breakers) for each all electric home constructed;

(d) Duke would purchase from Carter each high capacity riser he installed in all electric homes at a price of $80.00 per riser.

8. All of the inducements found to be offered Carter by Duke in Finding No. 7 are general offerings by Duke to

developers agreeing to construct "all electric" homes. All are either promotional practices or rates ancillary to Duke's basic service. All are established pursuant to G.S. 62-130(a) and as such are not subject to collateral attack in these proceedings.

9. Although Union contacted Carter and offered to serve his subdivision, Union did not prepare estimates for serving the entire subdivision and it did not offer Carter, and does not generally offer, and has not established practices or rates such as found to have been offered Carter by Duke in Finding No. 7.

10. Carter elected to have Duke provide service to his subdivision and still prefers Duke's service. His preference for Duke is based primarily upon the consideration and inducements offered him by Duke. He considers both services adequate and dependable and makes no choice between the basic services of the two suppliers.

11. The foregoing construction by Duke was at a cost of $2,335.00. Had Union served the same house from its nearest facilities, using the size and type wire recommended for serving an all electric home, its extension and conversion expense would have totaled $1,485.00. Duke constructed a total of 3,700 feet in reaching the house; Union would have been required to construct about 360 feet of new line and to have converted an additional 1,464 feet of wire to provide the grade of service recommended for the same house. It would be profitable for either Duke or Union to provide service in the entire subdivision, particularly to the 29 homes which are to be all electric.

12. Both Union and Duke are capable of providing adequate and dependable power to the Carter subdivision under conditions of service or service regulations which, when applied to the individual customers who locate in the subdivision, would be non-discriminatory.

13. Duke offered to withdraw from the area of the Carter subdivision and not to serve it, provided Carter should change his preference and release Duke. Carter did not change his preference.

14. There was no evidence that Duke's construction per se was an unlawful and wasteful investment and operating expense on Duke's part.

15. On or about the first week in April, 1967, Carter made request on Duke to proceed immediately to construct facilities to his subdivision and to serve a house which he had begun on the entry road some 600 feet west of Griffith Road and 352 feet from Union's line parallel to the subdivision's south property line. In response to Carter's request, Duke, on or about April 7, 1967, constructed its line from its existing facilities on Griffith Road north of Richardson Creek down and with Griffith Road south about

3,000 feet to the south property line of the subdivision, thence westerly 507 feet along the south edge of the subdivision to a dead-end, thence northeast 300 feet to the aforesaid house under construction. All of Duke's construction on Griffith Road was placed on poles installed by the telephone company for its primary use with pole rental rights to Duke. Duke's line from Griffith Road into the subdivision is on its own poles. Duke's new construction on Griffith Road crosses over the road twice and crosses over Union's lines twice before reaching the subdivision. Duke's is directly parallel to Union's lines on the opposite side of Griffith Road for about 700 feet as it approaches and reaches the back property line of the subdivision. The line in the subdivision is directly parallel to Union's for about 225 feet at an average distance of approximately 125 feet. Since Duke's construction, Carter has started an additional house in the subdivision on Griffith Road. This house is 157 feet from Union's lines and about 80 feet from Duke's new line. Union provides construction power to this house and the parties' lines also cross each other at this point on Griffith Road.

16. Prior to March 12, 1965, complainant and defendant had a contract between them which provided, inter alia, "nor shall either party, unless ordered to do so by a properly constituted authority, duplicate the other's facilities". On March 12, 1965, counsel for all of the electric membership corporations in the State and all electric public utilities entered into an agreement that their territorial relationships would be governed by G.S. 62-110.2 rather than by the provisions of any contracts as herein referred to.

CONCLUSIONS

The facts found above would seem to present in the present case the following issue for decision by the Commission: "Does a consumer, residing outside the boundary of a municpality and in an area not yet assigned to any electric supplier under G.S. 62-110.2(c), have the right to select and obtain electricity from the electric supplier of his choice when the structure to be served is not wholly within 300 feet of an existing line of any electric supplier?"

Relating this issue to the facts, the consumer is Carter, the chosen supplier is the defendant, Duke, the alternate supplier is the complainant, Union.

The question presented is one of great importance to the parties and all other electric suppliers in the State, this Commission, and the general public. The members of the public are entitled to know from what source they may seek and receive electric power, and whether, in so doing, they are involving themselves in potential litigation.

The set of facts described herein would seem to fall squarely within the provisions of G.S. 62-110.2(b)(5), which reads as follows:

"(5) Any premises initially requiring electric service after April 20, 1965 which are not located wholly within 300 feet of the lines of any electric supplier and are not located partially within 300 feet of the lines of two or more electric suppliers may be served by any electric supplier which the consumer chooses, unless such premises are located wholly or partially within an area assigned to an electric supplier pursuant to subsection (c) hereof, and any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises."

The decision of this case must rest upon the interpretation of the foregoing statute.

The 1965 General Assembly enacted comprehensive legislation under Chapter 287 of the 1965 Session Laws regulating the rights of electric suppliers to provide service. Prior to the enactment of this legislation, the relative rights and duties of public utilities and electric membership corporations were governed by contracts filed with this Commission. These contracts were the subject of profuse litigation and controversy. Blue Ridge Electric Membership Corp. vs. Duke Power Co., 258 N.C. 278 (1962).

In general, these contracts provided that neither party would serve premises within 300 feet of the facilities of the other unless ordered to do so by this Commission. Beyond this zone, the parties were free to compete. Carolina Power & Light Co. vs. Johnston Co. Membership Corp., 211 N.C. 717 (1937).

Chapter 287, Session Laws 1965, superceded the territorial provisions of these contracts and established the legislative policy in this regard. It was intended to put an end to the multiplicity of suits and controversies arising before its enactment. The general intent of the Legislature was for this Commission to assign to one supplier or another, as soon as practicable after January 1, 1966, all areas of the state outside municipal limits and more than 300 feet from the lines of any supplier, G.S. 62-110.2(c). Many areas of the State have already been assigned, however, the area in the present controversy has not been.

Pending assignment, the Legislature sought through other provisions of Chapter 287 to set out interim guidelines for suppliers to follow.

G.S. 62-110.2(b)(5) is such an interim provision. Once all areas have been assigned, this statute will have no further application.

We come, therefore, to the question of the meaning and intent of G.S. 62-110.2(b)(5). The statute appears clear and unambiguous on its face. "When the language of a statute is plain and free from ambiguity, expressing a single, definite and sensible meaning, that meaning is

conclusively presumed to be the meaning which the Legislature intended, and the statute must be interpreted accordingly." Davis vs. Granite Corp., 259 N.C. 672 at 675 (1963).

We feel that under the language of G.S. 62-110.2(b)(5), it is abundantly clear that the Legislature intended that, pending assignment of a rural area to any one electric supplier, a consumer requiring initial service to premises not within 300 feet of any existing supplier's lines has the unrestricted choice of suppliers and the chosen supplier has the unrestricted right to serve such consumer. Furthermore, as specifically stated in the final clause of the statute, "any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises."

Complainant contends that the extension of Duke's facilities into the area involved, where complainant already had facilities, constitutes a wasteful and unreasonable duplication of electric facilities in the area and that this Commission should order Union to serve Carter and order Duke to remove its facilities extended into the area to serve Carter.

In our opinion, to uphold complainant's contention and grant the relief sought would be to ignore the intent of the Legislature and to read into the statute words which do not exist. In short, complainant would have this Commission amend subsection (b)(5) by adding a clause at the end providing, "unless the Utilities Commission shall find that the consumer's choice creates unreasonable duplication of facilities". Neither an administrative agency nor the courts, under the guise of judicial interpretation, has the power to interpolate or superimpose provisions or limitations upon a statute which is clear and unambiguous. See Board of Architecture vs. Lee, 264 N.C. 602 (1965).

Throughout Chapter 287, Session Laws 1965, and the Public Utilities Act, G.S. 62-1, et seq., the Legislature deals with the intended functions and powers of the North Carolina Utilities Commission. Nowhere is there to be found any authority for the Commission to order a supplier to refrain from serving premises on the ground that such service would constitute an unnecessary or unreasonable duplication of facilities.

Complainant contends that the public policy of the State demands that it be granted the relief sought. Public policy in regard to duplication of power lines is a legislative and not a judicial question. Membership Corp. vs. Light Co., 255 N.C. 258 (1961).

Failure of the Legislature to specifically authorize the Commission to restrain extension of facilities on the grounds of duplication would indicate on intent that it should have no such authority.

Complainant's contention that the purpose of the 1965 Act was to end wasteful duplication does not seem tenable upon a reading of that legislation. In only one section, G.S. 110.2(c) is the term "unnecessary duplication of facilities" used. Under this section, the Commission is authorized to assign electric service areas to prevent "unnecessary duplication". The qualification of the term "duplication" by the word "unnecessary" indicates that the Legislature must have contemplated that some duplication would necessarily occur beyond the 300 foot boundary pending assignment of the territory. Under G.S. 110.2(b)(5), neither "duplication" nor "unnecessary duplication" has any bearing upon customer choice.

We feel that the primary purpose of the 1965 legislation was not to prevent duplication of facilities but to seek an end to the numerous controversies between electric utilities and electric cooperatives.

In addition to directing the Commission to assign service territories (G.S. 110.2(c)), the legislation specifically, clearly and in great detail sets down definite and positive rules to govern the territorial rights and restrictions of electric suppliers pending assignment, without the need to resort to proceedings before the Courts or the Commission (G.S. 110.2(b)).

If, therefore, the purpose of the legislation was to end controversy, that purpose would be completely defeated by the adoption of complainant's interpretation of the law.

That interpretation would have the following results:

1. Controversies between cooperatives and power companies would be multiplied many fold and the purpose of the General Assembly to end such controversies pending assignment would be completely defeated.

2. Members of the public and electric suppliers would have no way to determine their service rights under the 1965 Act.

3. Electric suppliers would be able to extend service to new customers only at their peril where facilities of other suppliers exist, with the possible result that virtually every such extension would have to be approved or disapproved by the Commission or the Courts.

Surely this was not the intent of the Legislature nor the meaning of the Statute.

Complainant in this action seeks to have itself ordered to serve a customer who has not chosen its service. To do so would be a violation by the Commission of the final clause of G.S. 62-110.2(b)(5) which prohibits any supplier not chosen by the consumer from thereafter furnishing service to the premises.

In conclusion we hold that under the applicable statute, Carter had the right to and did choose the services of Duke; Duke had the right to and did provide such service and Complainant has no standing, as a matter of law, to successfully protest the action of Duke and Carter.

IT IS, THEREFORE, ORDERED that the exceptions of the defendant to the Recommended Order, dated November 21, 1967 are sustained; the relief prayed for in the complaint is denied and the complaint is hereby dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 99
Union Electric Membership Corporation vs. Duke Power Company

ELLER, COMMISSIONER, DISSENTING: There were two ultimate questions in these proceedings. The first question, primarily one of fact, was: "Has Duke constructed its facilities vis a vis Union's facilities in such a way that there is an 'unnecessary duplication of electric facilities'?" The second question, exclusively one of law, was: "Does the Commission have jurisdiction to prohibit one electric supplier from constructing its facilities in such a way as to result in 'unnecessary duplication of facilities'?"

Commissioner McDevitt and I, as the Commissioners hearing the case, answered both questions in the affirmative. (See Recommended Order issued 21 November 1967, incorporated herein by reference.)

The majority, by adopting in all material respects the facts found by the Hearing Commissioners, agrees that Duke's construction amounts to "unnecessary duplication" of Union's facilities, but disclaims jurisdiction to prevent it. In doing so, the majority picks one statute [G.S. 62-110.2(b)(5)] from all the rest and gives it a most literal construction.

At page 9 of the majority order, it is said that "...a consumer requiring initial service to premises not within 300 feet of any existing supplier's lines has the unrestricted choice of suppliers and the chosen supplier has the unrestricted right to serve such consumer." Even in the literalistic approach taken by the majority, this conclusion fits neither the facts found by the majority nor the statute it relies upon for its disclaimer.

In the first place, the "premises" which Duke admittedly built its line to serve is the entire Carter subdivision,

not the one single house designedly located just more than 300 feet from Union's lines and relied upon to invoke the provisions of G.S. 62-110.2(b)(5). Had the actual purpose of the line (i.e., to serve the Carter subdivision) been relied upon, then the statute could not have been invoked, for the subdivision itself is in substantial part within 300 feet of Union's lines.

In the second place, the service which Duke provided to the single dwelling located just more than 300 feet from Union's lines was temporary, or construction, power and the construction of a line for temporary service draws unto itself none of the rights of election or territory provided under G.S. 62-110.2. The right of election, even if literally applied, must apply to an election for permanent service.

In the third place, since Carter is the developer and does not live or propose to live in the subdivision, he is not the "consumer" in the statutory sense that he may make the choice for consumers requiring permanent service. In applying G.S. 62-140(c), which is related to this proceeding and was pleaded by Union, the Commission similarly held. [See State of North Carolina ex rel. Utilities Commission v. Carolina Power & Light Company, 52 PUR3d 469 (1963)].

In the fourth place, the majority finds: "His (the developer's) preference for Duke is based primarily upon the consideration and inducements offered him by Duke. He considers both services adequate and dependable and makes no choice between the basic services of the two suppliers." (emphasis added). Finding of Fact No. 10, p. 5, of the Majority Order). This finding is at war with any conclusion that Carter made a bona fide choice between the two suppliers. Surely, by saying that the consumer is entitled to an "unrestricted choice" of suppliers, the majority would not deprive itself of its right to determine whether the consumer's choice is bona fide; hopefully no one, after deliberation, could believe the General Assembly intended to do so, especially since it also enacted G.S. 62-140(c) and other sections conferring its police powers upon the Commission.

The absurdity of the majority conclusions is demonstrated by the fact that, in this case, all the cooperative has to do to defeat Duke's claim is (a) pay Carter a higher price than Duke's $200 per lot, or (b) persuade the customer who occupies the house and requires permanent service to elect Union for initial service. [See G.S. 62-110.2(b)(9)]. Such procedure will not reduce controversies between power companies and cooperatives.

The foregoing is given to illustrate that, even in literal context, the jurisdictional facts found do not fit the statute relied upon for the majority's disclaimer.

We come now to matters of greater import. The North Carolina Supreme Court has repeatedly said that in matters before the Utilities Commission, substance and not form, is controlling. Judge Learned Hand long ago put the proposition which I believe should guide us here: "Of course, it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing; be it a statute, a contract, or anything else. But, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." Cabell v. Markham, 2 Cir., 148 F2d 737, 739, affirmed 326 U.S. 404.

In the case, Salt River Project, et al v. Federal Power Commission, Docket No. 20,960 (decided 15 February 1968), the U.S. Court of Appeals for the District of Columbia said: "...For statutes, as the Supreme Court has said, are 'instruments of government, not exercises in literary composition' ... and departure from a literal reading of statutory language may be necessary in order to effect the legislative purpose ... We must look through the statute itself to what lay behind it."

We must, therefore, ask ourselves: "What is the purpose of the Act upon which the majority relies?" The majority says that the "primary" purpose of the Act "was not to prevent duplication of facilities but to seek an end to the numerous controversies between electric utilities and electric cooperatives." (Majority Order, p.10). This superficial interpretation of the purpose of the Act demeans its passage, if for no other reason than the General Assembly expressly declared it as its purpose to "avoid unnecessary duplication of electric facilities." G.S. 62-110.2(c)(1).

The majority's interpretation converts the Act into one favoring the electric utilities over cooperatives and makes impossible the impartial administration of the state's police power by the Utilities Commission as between electric utilities and cooperatives. This can be illustrated by the following propositions:

(1) As interpreted, the Act gives the developer who indulges the subterfuge of placing one of his premises more than 300 feet from the lines of any supplier an absolute right to choose any supplier and such choice confers upon the chosen supplier the absolute right to serve. It is not only illogical to think the General Assembly meant to take regulatory authority from the Commission and confer upon private persons without restriction the right to so regulate corporations which exercise the power of eminent domain, it would be patently unconstitutional for the General Assembly to do so. The statute must be read in the light of the law of reason.

The General Assembly of necessity must be taken to have meant to confer only reasonable rights upon the consumer and the suppliers.

(2) The Commission is powerless under the Act, as interpreted, to prevent extension of electric facilities if a chosen supplier is willing to serve, but the Commission may nevertheless deprive the consumer of his choice if the elected supplier is unwilling to serve. In other words, the Commission is without jurisdiction to stop a chosen willing supplier, but has the authority to release an unwilling supplier. This interpretation completely destroys the logic and reasonableness of the Act.

(3) As interpreted, the Act permits a supplier to build miles and miles of line, however circuitous, and however duplicative of other facilities for any purpose whatsoever so long as incidentally a single customer premise (as defined in the Act) is connected. The constructing supplier then acquires the absolute right to serve anyone within 300 feet of such line on election notwithstanding that the line may have for the most part been within 300 feet of the lines of another supplier which theretofore had the statutory right to serve. [See G.S. 62-110.2(b)(4)]. Further, such new lines so constructed draw to themselves a 600 foot corridor protection in assignment proceedings. [See G.S. 62-110.2(c)(1)].

(4) Thus, by treating each statutory subsection as a separate building block, suppliers can now place one block upon another and thereby acquire territory which they could not have obtained otherwise, either in assignment proceedings or under the contractual provisions which were controlling before the Act. Aside from the rampant duplication which such an interpretation promotes, such a practice gives an advantage to the electric utility through its financial superiority over the cooperative which I do not believe the General Assembly could have intended. The situation is clearly illustrated in this case where Duke offered the developer $200 per lot in inducements which the cooperative was not authorized to offer. These financial inducements - not Duke's service - were the basis of the developer's choice. Thus, not only has Duke by the majority order acquired the Carter subdivision on the basis of the location of one house therein, it has also acquired territorial rights and dealt Union a body blow all the way back to Richardson's Creek.

Having surrendered a large part of their autonomy in agreeing to this legislation and having been made subject to our regulation of their territories, services, and - to some extent - their rates by this legislation, cooperatives should not in fairness be confronted through interpretation with a legalistic Frankenstein far worse than the conditions obtaining prior to that legislation.

I cannot accept that the General Assembly intended to enact legislation as one-sided as it is now interpreted; I further believe the General Assembly intended to confer additional duties upon the Commission to avoid unnecessary duplication rather than to diminish the powers it already had.

While it is not the office of an administrative agency to challenge the constitutionality of laws enacted by the General Assembly, neither is it the office of such agencies to interpret an Act in such a way that it is patently unconstitutional. I submit, therefore, if the legislation of 1965 was for the purpose and has the meaning the majority says, then it is unconstitutional and should be so declared.

Thomas R. Eller, Jr., Commissioner

McDEVITT, COMMISSIONER, DISSENTING: My views are stated in the Recommended Order issued on this docket on November 21, 1967. Nothing in the majority order gives me a basis for changing my original position. I, therefore, reaffirm the views contained in the Recommended Order and adopt them as my dissent.

John W. McDevitt, Commissioner

DOCKET NO. E-2, SUB 158

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Authority to Issue and Sell 177,957 Additional Shares of Its Common Stock Without Par Value, Pursuant to Its Stock Purchase-Savings Program for Employees	)	ORDER

On March 19, 1968, Carolina Power & Light Company (Company) filed herein an application for authority to issue and sell 177,957 additional shares of its common stock, without par value, pursuant to its Stock Purchase-Savings Program for Employees.

From a consideration of the Application, its supporting data and other information on file with the Commission, the Commission makes the following

FINDINGS OF FACT

1. The Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 336 Fayetteville Street, Raleigh, North Carolina, and is a public utility operating in North Carolina and South Carolina, where it is engaged in generating, transmitting, delivering and furnishing electricity to the public for compensation.

2. With the approval of its shareholders, the Company established in 1961 a Stock Purchase-Savings Program for Employees (Program), pursuant to the authority granted by the Commission in Docket No. E-2, Sub 78, wherein the Company was authorized to issue and sell not exceeding 50,000 shares of its Common Stock, without par value, under the Program. Subsequently in Docket No. E-2, Sub 110, the Commission authorized the Company to issue and sell 125,000 additional shares of its Common Stock, without par value, under the Program. With the approval of its shareholders, the Company in 1966 amended said Program in certain particulars, pursuant to the authority granted by the Commission in Docket No. E-2, Sub 129. The nature of the Program, as amended, and the manner of its operation are fully set out in the orders of the Commission issued on May 18, 1961 and May 18, 1966, respectively, in the aforesaid Docket No. E-2, Sub 78, and Docket No. E-2, Sub 129.

3. In connection with the issuance and sale of its shares of Common Stock under the Program, the Company filed with the Securities and Exchange Commission registration statements with respect to the 50,000 shares of Common Stock authorized originally by the Commission's order in Docket No. E-2, Sub 78, and with respect to the additional 125,000 shares of Common Stock authorized by the Commission's order in Docket No. E-2, Sub 110; however, at the time of the registration with the Securities and Exchange Commission of the additional 125,000 shares of Common Stock it became necessary for the Company to withdraw and it did withdraw from registration the unissued 22,043 shares of the 50,000 shares of Common Stock originally registered.

4. As of February 29, 1968, there were registered with the Securities and Exchange Commission 35,894 shares of Common Stock which the Company is authorized to issue and sell under the Program; however, shares of Common Stock currently are being issued and sold under the Program at the rate of approximately 2,700 shares per month. In order to have available for a reasonable period in the future a sufficient number of authorized and registered shares of its Common Stock for issuance and delivery under the Program, the Company now proposes to register, and to issue and sell under the Program, the unissued 22,043 shares of the 50,000 shares of Common Stock originally allocated and set aside therefor and an additional 177,957 shares of its Common Stock, or a total of 200,000 shares of its common stock, without par value.

5. The Company proposes that, upon receipt by the Company of the consideration for such additional Common Stock as it is sold to the Trustee under the Program from time to time, said Common Stock will be credited to the Company's Common Capital Stock Account at the total amount of the proceeds derived from the sale thereof. The issuance and sale of such additional shares is authorized by the Company's Charter and has been authorized by its Board of Directors.

6. The Stock Purchase-Savings Program for Employees has been well received by the employees of the Company and has assisted it in attracting and retaining efficient employees.

Upon the foregoing findings of fact, the Commission makes the following

CONCLUSIONS OF LAW

The Company is subject to regulation by this Commission as to rates, service and security issues; the proposed issuance and sale of 177,957 additional shares of Common Stock pursuant to its Stock Purchase-Savings Program for Employees (a) is for a lawful object within the corporate purposes of the Company; (b) is compatible with the public interest; (c) is necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and (d) is reasonably necessary and appropriate for such purpose.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Power & Light Company be and it hereby is authorized, empowered and permitted to issue and sell an additional 177,957 shares of its Common Stock, without par value, under its Stock Purchase-Savings Program for Employees;

2. That the net proceeds to be derived from the issuance and sale of said additional shares shall be used for the general corporate purposes of the Company and shall be credited to its Common Capital Stock Account; and

3. That the Company shall file with the Commission a report in duplicate setting forth the extent of employee participation in the Program, the number of shares of Stock actually sold to the Trustee and the selling price per share of each block of Stock sold, such report to be made annually until all Common Stock herein authorized has been sold.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Power Company for)
Authority to Issue and Sell Securities) ORDER

This cause comes before the Commission upon an application of Duke Power Company, Charlotte, North Carolina (Petitioner), filed under date of December 15, 1967, wherein authority of the Commission is sought as follows:

1. To issue and sell its First and Refunding Mortgage Bonds, ____% Series due 1998, in the aggregate principal amount of $75,000,000 with the selling price and interest rate to be established through competitive bidding;

2. To execute and deliver a Supplemental Indenture to its First and Refunding Mortgage to secure payment of said bonds; and

3. To issue and sell either at competitive bidding or at negotiated public sale 250,000 shares of a new series of preferred stock of the par value of $100 each, to be designated as "____% Cumulative Preferred Stock, Series E."

PETITIONER represents that it is a corporation duly organized and existing under the laws of the State of North Carolina; that its principal place of business is located at 422 South Church Street, Charlotte, North Carolina, that it is a public utility engaged in the business of generating, transmitting, distributing and selling electrical energy, and in the business of operating water supply systems and urban transportation systems; that it is a public utility under the laws of the State of North Carolina; and in its operations in this State, is subject to the jurisdiction of the North Carolina Utilities Commission. It is further represented that Petitioner is duly domesticated in the State of South Carolina, and is authorized to conduct and carry on the business hereinbefore mentioned in said State. Petitioner further represents that it is also a public utility under the laws of the State of South Carolina; that in its operations in that State, it is subject to the jurisdiction of the Public Service Commission of South Carolina. Petitioner further represents that it is also a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Power Commission.

PETITIONER further represents that subject to the approval of this Commission and of other regulatory authorities, it proposes to issue and sell between January 2, and March 31, 1968, (a) at competitive bidding $75,000,000 principal amount of a new series of First and Refunding Mortgage Bonds, ____% Series due 1998 (the Bonds), to be created and issued under its First and Refunding Mortgage, dated December 1, 1927, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), as Trustee, as heretofore supplemented and as to be further supplemented and amended by a Supplemental Indenture to be executed in connection with the issuance of the proposed Bonds; and (b) either at competitive bidding or at negotiated public sale

to a group of underwriters managed jointly by The First Boston Corporation and Morgan Stanley & Co., 250,000 shares of a new series of preferred stock at the par value of $100 each, to be designated as "____% Cumulative Preferred Stock, Series B" (the Preferred Stock).

It is further represented that the Bonds will be thirty-year bonds, and the interest at an annual rate to be specified, will be payable semiannually. It is further represented that the Bonds will be subject to all of the provisions of the First and Refunding Mortgage dated December 1, 1927, referred to above, as supplemented, and as to be further supplemented by the Supplemental Indenture to be executed in connection with their issuance, and by virtue of said First and Refunding Mortgage will constitute (together with Petitioner's outstanding First and Refunding Mortgage Bonds) a first lien on substantially all of Petitioner's fixed property and franchises.

PETITIONER further represents that the First Mortgage Bonds, ____% Series due 1998, will be sold through competitive bidding which will determine the interest rate to be borne by the Bonds, and the price to be paid to Petitioner for the Bonds; and that Petitioner will reserve the right to reject all bids; and that any bid accepted will be that which will result in the lowest cost of money for the Bonds. It is further represented that the Bonds will be nonrefundable at a lower cost of money for five years from date of issuance; that the holders of the Bonds will have no voting privilege; that the Bonds will be in fully registered form; and that provision will be made for free transfers or exchanges of registered pieces.

PETITIONER further represents that the proposed sale of Preferred Stock will be by competitive bidding unless, (a) market conditions existing at the time of sale indicate a rising dividend rate which would make desirable an expeditious method of sale not provided by competitive bidding; and (b) after considering all comparative factors (including expense of sale and anticipated yield) of the two methods of sale Petitioner is of the opinion that the cost of money to Petitioner would be lower in a negotiated sale than in a sale by competitive bidding. In the event of a sale by competitive bidding, Petitioner proposes publicly to invite sealed, written proposals for the purchase of the Stock. It is represented that the annual dividend rate of the Stock will be such rate as shall be fixed pursuant to competitive bidding; and the invitation for bids will require that each bid specify the annual dividend rate of the Stock and the price (not less than $100 per share) to be paid Petitioner for the Stock; that Petitioner will reserve the right to reject all bids, and if any bid is accepted, it will be that bid which will provide Petitioner with the lowest annual cost of money for the Stock. Petitioner further represents that provisions for redemption shall be made on the basis of conditions then existing in the competitive money market for high-grade preferred stock, and

a description of such provisions will be filed with this Commission by amendment to this application.

PETITIONER further represents that in the event of a negotiated sale, it will enter negotiations with the investment bankers referred to above to act as co-underwriters for the public offering for cash of the Stock upon such terms as to rate of dividends payable thereon and the terms upon which the same may be redeemed as may be agreed upon by Petitioner and said investment bankers. Petitioner anticipates that prevailing conditions in the money market will require that the Stock be nonrefundable at a lower cost of money for a period of at least seven years from date of issue; and a description of any redemption provisions and refunding provisions, if any, which Petitioner and said co-underwriters might negotiate will be filed with this Commission by amendment to this application.

PETITIONER further represents that the Preferred Stock will be issued at par and will be fully paid and nonassessable; that it is not proposed to provide for any sinking fund for the purpose of redemption; that the Stock will not be convertible into any other class or classes of stock; that Petitioner's stockholders have no pre-emptive rights to purchase the Preferred Stock; and the holders of the Preferred Stock will have no pre-emptive right in connection with any other stock of Petitioner.

PETITIONER further represents that the net proceeds from the sale of the Bonds and the Preferred Stock will be applied and used by Petitioner for the purpose of financing the cost of construction of additions to its electric plant facilities, including the repayment of outstanding short-term bank loans incurred for that purpose. Petitioner represents that on November 30, 1967, such outstanding loans amounted to $59,800,000, and that this amount is expected to increase to about $75,000,000 by December 31, 1967. It is further represented that Petitioner expended $107,672,000 during the first nine months of 1967 for additions to its electric generation, transmission and distribution facilities and that total expenditures for the year 1967 for such purpose are estimated to be $149,000,000 and total expenditures for the year 1968 are estimated to be $164,000,000.

PETITIONER further represents that no fee for services (other than attorneys, accountants, mortgage trustee, and fees for similar technical services) in connection with the negotiation or sale of the Bonds and Preferred Stock or for services in securing underwriters or purchasers thereof (other than fees included in any accepted competitive bid or fees negotiated with the aforesaid investment bankers in case of a negotiated sale of the Preferred Stock) will be paid in connection with the issue and sale of the Bonds and Preferred Stock.

From a review and study of the application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so finds, that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service; and,

(d) Reasonably necessary and appropriate for such purposes.

THEREFORE IT IS ORDERED, that Duke Power Company be, and it is hereby authorized, empowered and permitted under the terms and conditions set forth in the application;

1. To issue and sell its First and Refunding Mortgage Bonds ____% Series due 1998, in the aggregate principal amount of $75,000,000, plus accrued interest as set forth in the application, at such price and interest rate determined by competitive bidding as will result in the lowest annual cost of money thereon;

2. To execute and deliver to Morgan Guaranty Trust Company of New York a Supplemental Indenture in connection with the issuance and sale of said Bonds; and

3. To issue and sell 250,000 shares of Series E Preferred Stock, par value $100 per share, either at competitive bidding at such dividend rate, determined by the bidding, as will result in the lowest annual cost of money thereon, or at negotiated public sale to a group of underwriters managed jointly by The First Boston Corporation and Morgan Stanley & Co.

IT IS PROVIDED, HOWEVER, that this Order is expressly made subject to the following restrictions and requirements:

A. The sale of the Bonds shall not be consummated until the results of competitive bidding shall have been made a matter of record in this proceeding and a Supplemental Order entered by this Commission approving the interest rate to be borne by, and the price to be paid to, Petitioner for the Bonds;

B. The sale of the Preferred Stock shall not be consummated until the dividend rate to be borne by the Preferred Stock and the provisions for redemption and refunding applicable thereto shall have been made

a matter of record in this proceeding and a Supplemental Order entered by this Commission approving said dividend rate, provisions for redemption and refunding the Preferred Stock, and, in the event of a negotiated public sale, the amount of underwriters' fee proposed to be paid.

IT IS FURTHER ORDERED, that the Petitioner supply the Commission with one copy of the Supplemental Indenture to be executed in connection with the issuance of the Bonds when available in final form.

IT IS FURTHER ORDERED, that this proceeding be and the same is continued on the docket of the Commission without day for the purpose of such further action as may be deemed expedient when the Petitioner shall have advised the Commission either orally or otherwise, (a) of the results of its invitation for bids for the Bonds and the action taken by it with respect thereto; and (b) of the results of its invitation for bids for the Preferred Stock and the action taken by it with respect thereto or, in the case of a negotiated public sale, the results of its negotiations with the underwriters and the action taken by it with respect thereto; provided, that nothing contained in this Order shall be construed to deprive this Commission of any of its regulatory authority under the law.

IT IS FURTHER ORDERED, That Petitioner shall file with the Commission in the future, notice of negotiation of short-term bank notes, as to date of note, date of maturity, rate of interest, principal amount and setting forth the specific application of such loans as to items of equipment to be purchased, location of installation and beginning and estimated completion dates of installation. Such report shall be filed within thirty (30) days of the issuance date of such notes.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of January, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. E-7, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Power Company for) SUPPLEMENTAL
Authority to Issue and Sell Securities) ORDER

Under date of January 3, 1968, in the above-subject matter and docket number, this Commission issued its Order authorizing Duke Power Company (Petitioner) among other

things to issue and sell $75,000,000 principal amount of its First and Refunding Mortgage Bonds, ____% Series Due 1998 (herein called the "Bonds") with the selling price and interest rate to be established through competitive bidding. Petitioner was further authorized to execute and deliver a Supplemental Indenture to its First and Refunding Mortgage dated as of December 1, 1927, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York) to secure payment of the Bonds. However, the sale of the Bonds was not to be consummated until the results of competitive bidding shall have been made a matter of record in this proceeding and a Supplemental Order entered by this Commission approving the interest rate to be borne by the Bonds and the price to be paid to Petitioner for the Bonds.

On February 15, 1968, Petitioner informed the Commission of the results of the competitive bidding for the Bonds, and it appears to the Commission that the interest rate of 6-3/8% per annum to be borne by the Bonds and the price of 100.01999% of the principal amount of the Bonds to be paid to Petitioner for the Bonds under the terms and conditions set forth in the Application comply with all the requirements of Article 8 of Chapter 62 of the General Statutes of North Carolina pertaining thereto and that the issuance and sale of the Bonds should be approved.

THEREFORE, IT IS ORDERED that the interest rate of 6-3/8% per annum to be borne by the Bonds and the price of 100.01999% of the principal amount of the Bonds to be paid to Petitioner be and the same are hereby approved.

IT IS FURTHER ORDERED, that Petitioner be and it is hereby authorized, empowered and permitted to consummate the sale of the Bonds as contemplated in the Order of this Commission in Docket No. E-7, Sub 101 dated as of January 3, 1968.

IT IS FURTHER ORDERED, that this proceeding be and the same is continued on the docket of the Commission without day for the purpose of receiving the Supplemental Indenture in final form required to be filed herein and provided, that nothing in this Order shall be construed to deprive this Commission of its regulatory authority under law or to affect in any way the effectiveness or validity of the Order of this Commission dated as of January 3, 1968.

IT IS FURTHER ORDERED, that the Petitioner within a period of thirty days following the consummation of the sale of $75,000,000 principal amount of its First and Refunding Mortgage Bonds, 6-3/8% Series, Due 1998, shall file with this Commission, in duplicate, a verified report setting forth the terminal results of the sale as recorded on its general books of account.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Power Company for) SECOND
Authority to Issue and Sell Securities) SUPPLEMENTAL ORDER

Under dates of January 3, and February 15, 1968, in the above-subject matter and docket number, this Commission issued its orders authorizing Duke Power Company (Petitioner) among other things to issue and sell $75,000,000 principal amount of its First and Refunding Mortgage Bonds, ____% Series Due 1998 with the selling price and interest rate to be established through competitive bidding. Petitioner was further authorized to issue and sell either at competitive bidding or at negotiated public sale 250,000 shares of a new series of preferred stock of the par value of $100 each, to be designated as "____% Cumulative Preferred Stock, Series E." Authority to issue and sell such securities was limited to the period of January 2 to March 31, 1968.

Pursuant to such authority, on February 26, 1968, Petitioner issued and sold $75,000,000 principal amount of its First and Refunding Mortgage Bonds, 6-3/8% Series Due 1998. A report thereof was duly filed with this Commission under date of March 7, 1968. Petitioner has not exercised its authority to issue the preferred stock.

Under date of March 21, 1968, Petitioner filed an amendment to its application requesting that the number of shares of ____% Cumulative Preferred Stock, Series E, authorized to be issued and sold, be increased from 250,000 shares to 350,000 shares and that the time in which the issue and sale may be consummated be extended from March 31, 1968, to June 30, 1968. Petitioner further requests approval of a proposal to issue and sell such preferred stock at negotiated public sale to a group of underwriters to be managed jointly by The First Boston Corporation and Morgan Stanley & Co., investment bankers.

PETITIONER represents that, following discussions with investment bankers in whom it has confidence, it has concluded that because of conditions existing in the money market the issuance of its preferred stock should be deferred until the second quarter of this year. Petitioner further represents that expenditures for its construction program of additions to its electric generation, transmission, and distribution facilities will be higher

than were anticipated at the time its application was filed on December 15, 1967. Petitioner represents that such expenditures for the year 1967 totaled $162,271,000, rather than $149,000,000, which had been estimated; and that Petitioner's estimate of total expenditures for the year 1968 has been revised upward from $164,000,000 to $176,000,000. Because of these changes, Petitioner believes that it is advisable to issue and sell 350,000 shares of its preferred stock, rather than 250,000 shares.

PETITIONER further represents that in its opinion conditions presently existing in the market for high-grade preferred stock indicate a rising dividend rate which makes desirable an expeditious method of sale not provided by competitive bidding and that the cost of money to Petitioner would be lower in a negotiated sale than in a sale by competitive bidding. Petitioner proposes to enter negotiations with the aforesaid investment bankers to act as co-underwriters for the public offering for cash of the proposed preferred stock upon such terms as to rate of dividends payable thereon and the terms upon which same may be redeemed as may be agreed upon by Petitioner and said investment bankers. Petitioner represents that prevailing conditions in the money market will require that the stock be nonrefundable at a lower cost of money for a period of 7 years from date of issue, as was the case in Petitioner's last issue of preferred stock.

PETITIONER further represents that no fees for services (other than attorneys, accountants and fees for similar technical services) in connection with the negotiation and sale of the proposed stock or for services in securing underwriters or purchasers thereof (other than fees negotiated with the aforesaid investment bankers) will be paid in connection with the issue and sale of the proposed stock.

PETITIONER further represents that the stock will be issued at par and will be fully paid and nonassessable; that it is not proposed to provide for any sinking fund for the purpose of redemption; that the stock will not be convertible by the holders thereof into any other class or classes of stock; that Petitioner's stockholders have no pre-emptive rights to purchase the proposed preferred stock; and that its holders will have no pre-emptive right in connection with any other stock of Petitioner.

PETITIONER further represents that the net proceeds from the sale of the proposed stock will be applied and used by Petitioner for the purpose of financing the cost of construction of additions to its electric plant, including the repayment of outstanding short-term bank loans incurred for such purpose. Petitioner further represents that on February 29, 1968, such outstanding loans amounted to approximately $12,000,000, and that this amount is expected to increase to about $90,000,000 by December 31, 1968.

From a review and study of the application, as amended, its supporting data and other information in the Commission's files, the Commission is of the opinion and so finds, that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

THEREFORE, IT IS ORDERED, That Duke Power Company be, and it hereby is authorized, empowered and permitted under the terms and conditions as set forth in the application, as amended, to issue and sell 350,000 shares of Series E Preferred Stock, par value $100 per share, at negotiated public sale to a group of underwriters managed jointly by The First Boston Corporation and Morgan Stanley & Co.

IT IS PROVIDED, HOWEVER, That this order is expressly made subject to the restriction and requirement that the sale of such preferred stock shall not be consummated until the dividend rate to be borne by the preferred stock and the provisions for redemption and refunding applicable thereto shall have been made a matter of record in this proceeding and a supplemental order entered by this Commission approving said dividend rate, provisions for redemption and refunding the preferred stock, and the amount of underwriters' fees proposed to be paid.

IT IS FURTHER ORDERED, That this proceeding be and the same is continued on the docket of the Commission without day for the purpose of such further action as may be deemed expedient when Petitioner shall have advised the Commission either orally or otherwise of the results of its negotiations with the underwriters and the action taken by it with respect thereto; provided, that nothing contained in this order shall be construed to deprive this Commission of any of its regulatory authority under the law.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. E-7, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Power Company for) THIRD SUPPLEMENTAL
Authority to Issue and Sell Securities) ORDER

Under dates of January 3, February 15 and March 29, 1968, in the above subject matter and docket number, this Commission issued its Orders authorizing Duke Power Company (Petitioner), among other things, to issue and sell 350,000 shares of Series E Preferred Stock, par value $100 per share, at negotiated public sale to a group of underwriters managed jointly by the First Boston Corporation and Morgan Stanley & Co. However, the sale of the shares was not to be consummated until the results of the negotiated public sale shall have been made a matter of record herein and a Supplemental Order issued by this Commission approving the annual dividend rates to be borne by the Shares and the price to be paid Petitioner for the shares.

On April 17, 1968, Petitioner informed the Commission of the results of the negotiated public sale of the Shares as follows:

(1) The annual dividend rate of 6.72% per annum to be borne by the Shares; and

(2) The Underwriters' commissions of $1.25 per share.

It appears to the Commission that this information complies with all the requirements of Article 8 of Chapter 62 of the General Statutes of North Carolina pertaining thereto and that the issuance and sale of the Shares should be approved.

THEREFORE, IT IS ORDERED, That the annual dividend rate of 6.72% per annum to be borne by the Shares and the net proceeds of $34,562,500 to be paid to Petitioner be and the same are hereby approved.

IT IS FURTHER ORDERED, That the Petitioner be, and it is hereby authorized, empowered and permitted to consummate the sale of the Shares as contemplated in the Second Supplemental Order of this Commission in Docket No. E-7, Sub 101, dated as of March 29, 1968.

IT IS FURTHER ORDERED, That the Petitioner within a period of thirty (30) days following the consummation of the sale of 350,000 shares of its Series E Preferred Stock, par value $100 per share, shall file with this Commission, in duplicate, a verified report setting forth the terminal results as recorded on its general books of account.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 105

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Virginia Electric and Power Company)
for Authority to Issue and Sell Its First and)
Refunding Mortgage Bonds, Series W ____% Due 1999,) ORDER
in the Aggregate Principal Amount of $85,000,000)

This cause comes before the Commission upon an Application of Virginia Electric and Power Company (Petitioner), filed under date of November 26, 1968, through its Counsel, Spruill, Trotter & Lane, Rocky Mount, North Carolina, wherein authority of the Commission is sought as follows:

1. To issue and sell its First and Refunding Mortgage Bonds, Series W ____% due January 1, 1999, in the aggregate principal amount of $85,000,000 with the selling price and interest rate to be established through competitive bidding; and

2. To execute and deliver to a corporate trustee, a Supplemental Indenture dated as of January 1, 1969, to an original indenture, under which the Series W Bonds will be issued.

PETITIONER is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, with its general offices in Richmond, Virginia; is engaged in the business of providing electric and gas services in the Commonwealth of Virginia, and electric utility service in the States of North Carolina and West Virginia; is a public utility as defined in Article I of Chapter 62, General Statutes (G.S. 62-1 - 62-4) of North Carolina; and its operations in this State are subject to the jurisdiction of the North Carolina Utilities Commission.

PETITIONER represents that its construction program for the years 1968 and 1969 are estimated at $179 million and $228 million, respectively. In each year approximately half of the funds is for additional generating capacity. The remaining expenditures are for electric transmission lines and other additions and replacements of electric and gas facilities to meet load demands and to increase efficiency.

PETITIONER further represents that it now proposes to issue and sell $85,000,000 principal amount of its First and Refunding Mortgage Bonds, Series W due January 1, 1999 (the Bonds), to be created and issued under its Indenture of

Mortgage dated November 1, 1935, to Chase National Bank of the City of New York (now the Chase Manhattan Bank), as Trustee, as heretofore supplemented and modified and as to be further supplemented by a Twenty-Seventh Supplemental Indenture dated as of January 1, 1969, said Supplement to be substantially in the form and content of Exhibit 9 to the Application. It is further represented that the proposed Bonds will be dated January 1, 1969; will mature January 1, 1999, and the interest at an annual rate to be specified will be payable on the first day of January and the first day of July in each year. It is further represented that the Bonds will contain the terms and will be of the form and tenor as set forth in the Twenty-Seventh Supplemental Indenture.

PETITIONER further represents that the Bonds will be sold through public competitive bidding which will determine the interest rate to be borne by the Bonds, and the price (not less than 99% of their principal amount) to be paid to Petitioner for the Bonds.

IT IS FURTHER REPRESENTED that the net proceeds derived from the sale of the Bonds will be used for construction expenditures and retirement of short-term indebtedness incurred for that purpose ($26 million outstanding September 30, 1968, and an estimated additional $36 million to be borrowed prior to the sale of the Bonds). It is further represented that the expenses expected to be incurred in connection with the issuance and sale of the Bonds are estimated at $223,000.

From a review and study of the Application, its supporting data and other information on file with the Commission, the Commission is of the opinion and so finds that the transaction herein proposed is:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service.

(d) Reasonably necessary and appropriate for such purposes;

THEREFORE IT IS ORDERED, That Petitioner, Virginia Electric and Power Company be and it is hereby authorized, empowered and permitted, subject to restrictions and requirements contained in paragraph three (3) below:

1. To issue and sell, through competitive bidding, its First and Refunding Mortgage Bonds, Series W, due January 1, 1999, in the aggregate principal amount of

$85,000,000 at a price of not less than 99% of the principal amount of the Bonds, with the interest rate and selling price to be determined by the bidding;

2. To execute and deliver to the Chase Manhattan Bank, as Trustee, a Twenty-Seventh Supplemental Indenture dated as of January 1, 1969, to secure the payment of principal and interest of the Series W Bonds; and

3. Except that the sale of the said Series W Bonds shall not be consummated until the results of competitive bidding have been made a matter of record in this proceeding and a supplemental order entered by this Commission approving the interest rate to be borne, and the price to be paid to Petitioner for the Series W Bonds.

IT IS FURTHER ORDERED, That the Petitioner supply this Commission with one (1) copy of the Twenty-Seventh Supplemental Indenture dated as of January 1, 1969, when available in final form.

IT IS FURTHER ORDERED, That this proceeding be and the same is continued on the docket of the Commission for the purpose of this Commission taking such further action as it may deem appropriate when Petitioner shall have made a matter of record in this proceeding, the result of its invitation for bids for the Series W Bonds, and the action taken by it with respect thereto, and for the further purpose of receiving the supplemental exhibit to be filed herein; that not anything contained in this Order shall be construed to deprive this Commission of any of its regulatory authority under the law, notwithstanding any provision in Petitioner's Indenture of Mortgage dated November 1, 1935, as heretofore supplemented and as to be further supplemented and amended by a Twenty-Seventh Supplemental Indenture dated as of January 1, 1969.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. ES-9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint application of Duke Power Company and	) ORDER
Davie Electric Membership Corporation under	) ASSIGNING
Chapter 287, Public Laws 1965 [G.S. 62-110.2(c)]	) SERVICE
for assignment of areas in Alexander, Davie,	) AREAS
Iredell, Rowan, Wilkes, and Yadkin Counties	)

HEARD IN: The Commission Hearing Room, Old YMCA Building, Raleigh, North Carolina, on Thursday, March 7, 1968, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, M. Alexander Biggs, Jr., Clawson L. Williams, Jr., and Thomas E. Eller, Jr. (presiding)

APPEARANCES:

For the Applicants:

John D. Hicks
Duke Power Company
422 South Church Street
Charlotte, North Carolina

E. R. Crater, President
Davie Electric Membership Corporation
Yadkinville, North Carolina

J. C. Jones, Manager
Davie Electric Membership Corporation
Mocksville, North Carolina

ELLER, COMMISSIONER: This matter comes before the Commission on joint application filed on August 29, 1967, by Duke Power Company (Duke) and Davie Electric Membership Corporation (Davie) in accordance with the provisions of Section 62-110.2(c) of the General Statutes of North Carolina for the assignment of electric service areas in Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties, North Carolina.

Under date of September 7, 1967, the Commission issued in this docket a form of notice to be published once a week for four (4) successive weeks in daily papers having general circulation in Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties, as required by Rule R8-29 of the Commission. Such notice was duly published on September 14, September 21, September 28, and October 5, 1967, as appears from affidavits of publication of notice now on file in this docket, in the Charlotte Observer, having general circulation in Alexander, Iredell, and Rowan Counties; and the Winston-Salem Journal, having general circulation in Davie, Wilkes, and Yadkin Counties. This notice set the matter for public hearing in the Commission Hearing Room, Raleigh, North Carolina, at 10:00 a.m. on December 6, 1967, and further provided that anyone being aggrieved by the proposed assignments and desiring to intervene in the matter or desiring to protest the proposed assignment of territory was required to file such intervention or protest with the Commission by November 24, 1967. The notice further provided that if no one intervened or filed any protest to the application by November 24, 1967, that the Commission would determine the application on the facts set forth

therein and the public records available to it in the Commission files without holding public hearing.

On November 21, 1967, the Commission received a communication from Mr. Armand T. Daniel of Mocksville, North Carolina, stating that he owned 1,000 acres of land between Mocksville and Cooleemee, a part of which was proposed to be assigned to Duke, a part to be assigned to Davie, and a part to be left unassigned. He desired to have the entire tract to be left unassigned, and requested that he be allowed to be heard on the matter. The Commission also received a letter from Mr. H. T. Lowery, Winston-Salem, North Carolina, to the same general effect as Mr. Daniel's letter. Negotiations were had among the companies and the aforesaid individuals. The Commission then determined that public hearings should be held to afford the individuals and any other interested parties opportunity to be heard. Accordingly, hearings were scheduled and held as captioned after notice to the interested parties.

Neither Mr. Daniel nor Mr. Lowery nor any other persons appeared at the hearing in opposition to the joint application. The evidence adduced at the hearing justifies the following

FINDINGS OF FACT

1. Duke is a corporation duly organized and existing under the laws of the State of North Carolina as a public utility with its principal office and place of business at 422 South Church Street, Charlotte, North Carolina, and Davie is an electric membership corporation duly organized and existing under the laws of the State of North Carolina with its principal office and place of business at Mocksville, North Carolina.

2. Both of the above-named Applicants are "electric suppliers" as defined in Section 62-110.2(a)3 of the General Statutes of North Carolina, and as such are authorized to receive from the Commission assignments of service areas in accordance with public convenience and necessity pursuant to Section 62-110.2(c) of the General Statutes of North Carolina.

3. Duke and Davie are authorized to operate, and do operate, in Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties and are, and for many years have been, rendering electric service to numerous customers in these counties. Both suppliers are capable of rendering electric service in the areas which are proposed to be assigned to them.

4. No other electric supplier as defined in G.S. 62-110.2(a)3 operates in the areas in Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties covered by this application and the other such electric suppliers in the subject and adjacent counties assert no claim for assignment

to them by the Commission of any areas covered by this application.

5. Duke and Davie conducted extended negotiations with respect to Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties and the designation of assigned and unassigned areas therein as contemplated under Chapter 287, Public Laws 1965, now codified in Chapter 62 of the General Statutes of North Carolina. As a result of these negotiations, a joint agreement was reached between the Applicants covering all of the areas of the above counties in which both render electric service, which are outside the corporate limits of municipalities and more than 300 feet from the lines of any electric supplier and which may be subject to assignment or unassignment by this Commission under Section 62-110.2(c) of the General Statutes of North Carolina.

6. Maps of Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties were filed as Exhibits A, B, C, D, E, and F, respectively, with the application, which maps through appropriate symbols and legends designate the areas that under the joint agreement the Applicants request the Commission to assign to Duke and Davie, respectively, and also designate certain areas requested to be unassigned as to any electric supplier. Exhibits A, B, C, D, E, and F were signed by representatives of both Applicants and showed the lines of all suppliers in Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties as set out on the official Mylar maps of such counties which are on file with the Commission. (Such official Mylar maps were filed with the Commission on the following dates: Alexander County, May 4, 1966; Davie County, May 4, 1966; Iredell County, August 3, 1966; Rowan County, August 3, 1966; Wilkes County, August 3, 1966; and Yadkin County, August 3, 1966.)

CONCLUSIONS

The Commission finds and concludes that the assignment of areas as designated by appropriate symbols and legends on the maps filed with this application as Exhibits A, B, C, D, E, and F is in accordance with public convenience and necessity.

IT IS, THEREFORE, ORDERED That the application of Duke Power Company and Davie Electric Membership Corporation for area assignment be, and the same hereby is, approved; and the areas in Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties situated more than 300 feet from the lines of any electric supplier and outside the corporate limits of any municipality are assigned to the respective Applicants or designated as unassigned, all as shown on Exhibits A, B, C, D, E, and F, incorporated herein by reference and made a part of this order as fully as if set out herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. EC-58, SUB 2
DOCKET NO. E-2, SUB 145

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications of Central Electric Membership)
Corporation and of Carolina Power & Light Company)
under Chapter 287, Public Laws 1965 [G.S. 62-110.2) ORDER
(c)] for Assignment of Electric Service Areas in)
Chatham, Harnett, Lee, Moore, and Randolph Counties)

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, beginning on July 18, 1967, at 10:00 a.m. and at various recessed days concluding on December 13, 1967

BEFORE AND DECIDED BY: Chairman Harry T. Westcott (presiding) and Commissioners John W. McDevitt, M. Alexander Biggs, Jr., and Thomas R. Eller, Jr. (Williams, Commissioner, not participating)

APPEARANCES:

For the Applicants:

William T. Crisp, and
Howard F. Twiggs
Crisp, Twiggs, and Wells
Attorneys at Law
613 Branch Bank & Trust Company Building
Raleigh, North Carolina
For: Central Electric Membership Corporation

Sherwood H. Smith, Jr., and
Charles F. Rouse
Attorneys at Law
Carolina Power & Light Company
336 Fayetteville Street
Raleigh, North Carolina
For: Carolina Power & Light Company

For the Intervenors and Protestants:

William T. Crisp, and
Howard F. Twiggs
Crisp, Twiggs, and Wells
Attorneys at Law
613 Branch Bank & Trust Company Building

Raleigh, North Carolina
For: North Carolina Electric Membership Corporation

Sherwood H. Smith, Jr., and
Charles F. Rouse
Attorneys at Law
Carolina Power & Light Company
336 Fayetteville Street
Raleigh, North Carolina
For: Carolina Power & Light Company

W. Lamont Brown
Brown & Crews
Attorneys at Law
Box 116, Southern Pines, North Carolina
For: Whispering Pines, Inc.
A. B. Hardee

William B. Pittman
Pittman, Staton & Betts
Attorneys at Law
P. O. Box 1009, Sanford, North Carolina
For: Lee Land & Development Company, Developers of Cedar Hills Subdivision, Sanford, North Carolina

Robert L. Gavin
Gavin, Jackson & Gavin
Attorneys at Law
114 Wicker Street
Sanford, North Carolina
For: Roberts Company

J. Glenn Edwards
Route 8
Sanford, North Carolina
For: Himself

ELLER, COMMISSIONER: These consolidated proceedings arise as follows: G.S. 62-110.2(c)(1), enacted in 1965, directs the Commission to assign to electric suppliers all areas outside the corporate limits of municipalities and more than 300 feet from the lines of all electric suppliers.* Both Central Electric Membership Corporation (hereinafter called "Central") and Carolina Power & Light Company (hereinafter called "CP&L") render electric service in parts of Chatham County, Harnett County, Lee County, Moore County, and Randolph County. Pursuant to Commission rules, Central, on February 28, 1967, made application for assignment to it of large areas in each of the aforesaid counties, and attached a map showing the areas it claimed for assignment purposes. CP&L, on March 3, 1967, likewise filed application setting forth large areas in the same counties it sought to have assigned to it, and attached a map showing those areas. From a comparison of the two maps it became apparent that the claims of the parties overlapped in considerable degree.

---

*Electric power companies and electric membership corporations are defined in the Act as "electric suppliers;" municipally-owned systems are not. G.S. 62-110.2(3).

The two applications were consolidated in the same proceedings and a "composite," or joint, map with agreed legend was developed so that the respective claims and overlaps would show more readily.* In pertinent part, the agreed legend was as follows:

(1) Those areas sought by CP&L but not by Central were shown in red.

(2) Those areas sought by Central but not by CP&L were shown in green.

(3) Those areas sought by both parties were shown in yellow.

(4) Those areas sought to be left unassigned were shown cross-hatched in blue.

---

* The applications and maps were amended for technical and clerical reasons not requiring lengthy description here.

Following preparation of the composite, or joint, map, it was posted at various places in the five counties and notice published in newspapers having general circulation in the counties giving the date, time, and place of hearings in the proceedings.

Interventions were ruled upon as appears of record in the proceedings, with the result that each party was admitted as a Protestant to the application of the other. Certain additional parties Intervenor were admitted as appears in the caption. Lengthy hearings were held in which extensive evidence was presented bearing upon, among other things:

(1) Explanations and descriptions of methods and philosophies used in preparing the maps, boundaries, and territorial claims of the respective parties.

(2) The characteristics of the two Applicants as to type of organization, corporate authority, personnel (their offices, location, and qualifications), available facilities and equipment, methods and philosophies of operation, present financial ability, ability to attract and serve various classes of customers, and ability to attract capital for future service requirements.

(3) The needs, preferences, and convenience of affected members of the public.

(4) Available telephone and other utility services.

(5) Industrial locations, present and prospective.

(6) Location of the lines and types of lines of the respective suppliers for the areas.

Both Applicants relied primarily upon their maps for describing the boundaries of the areas sought. The principal difference in mechanical descriptions of the territories sought results from the two different approaches of the parties. Primarily, but not exclusively, Central followed the "mid-point" concept; i.e., it took a map on which were imposed the electric lines of each party and, in general, drew a line of demarcation approximately midway between the extremities of the lines of the two systems. CP&L primarily followed natural monuments such as highways, rivers, political boundaries, etc., without regard to proximity of the line as drawn to its own or Central's lines. Both parties reduced their map depictions to "metes and bounds" narrative descriptions, although neither party, of course, based its descriptions on actual surveys on the ground.

Upon the evidence adduced, we make the following

FINDINGS OF FACT

1. Both CP&L and Central are electric suppliers as defined by Section 62-110.2(a)(3) of the North Carolina General Statutes; both are properly before the Commission, which has jurisdiction over the subject matter of the proceeding.

2. CP&L is an electric public utility furnishing wholesale and retail electric service for profit to the general public in, among other areas, Chatham County, Harnett County, Lee County, Moore County, and Randolph County. CP&L generates the preponderance of the electric power it sells.

3. Central is a non-profit electric membership corporation furnishing electric service to its members in the various areas in the same five counties named in Finding No. 2. Central does not generate electric power, but purchases the prepondenance of its total requirements as a wholesale customer of CP&L.

4. Both CP&L and Central are capable of supplying, and do supply, good, adequate, and dependable electric service for the requirements of their existing customers and members, respectively, in the areas of the five counties mentioned.

5. The North Carolina Utilities Commission has extensive jurisdiction over the rates, services, and level of earnings of CP&L; it has limited jurisdiction over Central relating

primarily to the assignment of territory, preventing or relieving promotional rebates, preferences, and unjust discriminations in service and rates, compelling efficient, adequate, and dependable service, and the licensing of generating plants.

6. In the five-county territory involved in the application, CP&L has generating units valued at $47,619,755, transmission lines valued at $5,497,500, and distribution facilities valued at $4,390,180. This is exclusive of substations, transformers, vehicles, and equipment, and distribution systems within the Sanford corporate limits and other municipalities in the area. Central has distribution lines and related facilities in the area valued at 2.7 million dollars.

7. The areas where Central's facilities are located are predominantly residential and farming, or rural, areas. In 1966, Central sold 20,373,046 kilowatt hours (KWH) of electricity. It serves 3,600 member customers, 3,300 of which are residential customers. Central serves no manufacturing or industrial customers as such. Its largest service demand is to three (3) schools, primarily for heating.

8. The areas where CP&L's facilities are located range from rural through urban. It had sales of 24 million KWH (with a demand of 4,406 KW) to one industrial customer in the area, 4 million KWH greater than Central's entire sales. CP&L serves numerous industrial and manufacturing concerns in the area. CP&L serves 10,067 customers within the area but outside of municipal limits and serves another 17,478 inside municipal limits within the area.

9. CP&L has approximately ten (10) 110 KV transmission lines traversing parts of the five-county area and has 908 miles of distribution lines outside municipal limits within the area. Central has 843 miles of distribution lines in the five-county area.

10. At December 31, 1967, CP&L had $209,078,857 in equity capital and retained earnings; Central had "patronage capital" amounting to $686,409.

11. CP&L is financed by capital furnished from the sale of securities in the financial markets and from internally generated funds. Its bonds are rated "AA", and it has a proven ability to raise large sums of capital on comparatively short notice. Central is dependent upon appropriations of the United States Congress and the approval of the Rural Electrification Administration administrator and upon internally generated funds for its capital. While Central has never been called upon to provide service for which it could not obtain capital, it nevertheless has not been called upon to raise capital to meet the electric needs of extremely large industrial customers.

12. Central is organized and exists for the purpose of furnishing electricity to persons in rural areas not otherwise having central station service. It is not organized to, and does not operate on, the basis of "pecuniary profit," as does CP&L. For this reason, the procurement of large volume industrial loads is not as fully within the corporate objectives of Central as it is with CP&L.

13. Industrial and manufacturing concerns tend to locate on and demand the services of CP&L as opposed to Central. There are many reasons for this. Some industries are philosophically opposed to, and wary of, becoming members in cooperatives where they have no more protection than a single vote in rate and policy matters; i.e., they prefer the regulation of the State Commission to the regulation of the cooperatives' membership and the REA. Others base their preference on the electric utility's financial strength and its ability to supply operational expertise, specialized equipment, alternate and emergency supplies of energy and many others. Industries usually have more than one available site for location and, all other things being equal, tend to choose that site served or to be served by CP&L and tend not to choose the site to be served by Central.

14. Of the total territory sought throughout the five (5) counties involved, approximately 48.5% is claimed by CP&L without substantial controversy; 33.9% is claimed by the cooperative without substantial controversy; and 17.6% (shown in 7 separately designated areas) is claimed by both parties.

15. Certain of the controverted areas in these proceedings, while not presently highly developed, are areas of prime industrial potential by reason of water supply, railroads, highways, proximity to sources of bulk power supply and proximity to existing industry. Included in these areas are industrial sites developed and actively promoted by various persons, firms, and agencies concerned with industrial development, of which CP&L is one. The following areas, in particular, are of high industrial potential. Areas "A" and "B", Areas C-5, C-6, C-7, C-13, C-14, C-15, C-16, C-17, L-1, L-2, L-3, L-4, L-5, L-8, L-10, L-15, L-16, L-19, M-7, M-8, M-11, M-12, and M-15.

CONCLUSIONS

We believe the underlying guides to territorial assignments between electric suppliers are:

(1) The reasonable present and probable future electric power needs and preferences of the public in the affected areas as a whole.

(2) The establishment of territorial integrity for the respective suppliers reasonably consistent with their financial and operational abilities and objectives.

(3) The avoidance of future unnecessary duplication of electric facilities to the maximum reasonable extent.

Specifically, in making the territorial assignments hereinafter, we have considered and weighed the following factors, among others:

(1) The physical characteristics of the areas involved. This includes:

(a) The size of the area to be assigned. We consider it generally inadvisable to assign very small, isolated areas to a supplier since small, "island" territories would be difficult to administer;

(b) The topography of the area. Such natural and man-made features as rivers, mountains, railroads, and highways are frequently natural boundaries of communities of interest and should be considered;

(c) The location and population density of an area. A built-up area immediately adjacent to a municipality in which one supplier already serves is related to the municipality and the supplier serving within the municipality;

(d) Whether an area is essentially residential, agricultural, commercial, light industrial, or heavy industrial. These characteristics have a bearing on the needs of the area as well as on the ability of a supplier to serve those needs.

(2) The existence of electric lines in the area. This includes:

(a) Whether the lines are for transmission or distribution. For example, we consider that the mere existence of a transmission line through a residential or agricultural area of itself has little bearing on whether the area should be assigned to the owner of the transmission line, for it generally is neither practicable from an engineering standpoint nor feasible economically to perform the step-down transformation which would be necessary to serve a residential, small commercial, or agricultural load directly from the line. On the other hand, the existence of a transmission line through an industrial area may have a direct bearing on assignment of that area because transformation directly from the line to meet a large demand would be both practicable and feasible;

(b) If the lines are distribution lines, their voltage level and type of conductors must be considered. For example, a single phase distribution line is not necessarily duplicated by the construction of a three-phase line to serve a load which the single phase line will not accommodate;

(c) The historic existence of the lines. If a line is historically a "tie-line" not built to serve customers, or if it was built solely for territorial purposes and is not serving customers, this is insufficient to justify an assignment wholly on the basis of pre-existing lines. On the other hand, if a supplier has active, adequate distribution lines in an area and historically has sought to and has served the particular needs of the area, we believe this should be given weight toward assigning that area and that load to the historic supplier.

(3) Electrical Capability. This includes the location of lines, their type, and their electrical capabilities as already discussed. In addition, however, it includes facilities the respective suppliers have in the general area which would benefit the area and permit economical service. For example, the presence or absence of nearby substations, offices where complaints may be taken, maintenance and repair crews for both ordinary and emergency service, etc., must be considered. Where one supplier has a large convenient operation offering multiple services and the other supplier is limited, we have given weight to the supplier who can render service more readily and economically than the other. Travel time of repairmen-installers, etc., is not only an expense item to be considered, but a significant factor in service reliability. In making these assignments, we have given consideration to comparisons of travel time and distances from the respective supplier's offices to points in the areas.

(4) The needs and preferences of the public in the area in question. Pertinent to this consideration is the growth potential and type of future service needs of the areas in question. While such considerations are admittedly speculative to some extent, we are convinced it must not be excluded from consideration. In this regard, as already alluded, we have weighed as best we can whether each area involved in the main has residential, commercial, or industrial potential. For example, while the statute accords each supplier a 600-foot corridor along all existing lines - whether transmission or distribution - we hold it to be more in accordance with public convenience and necessity if, rather than arbitrarily establishing a one-mile corridor along all transmission lines, we establish a wider corridor in certain areas with industrial potential or in areas where it is reasonable to expect the owner of the transmission line to serve residential and commercial loads while in

other areas conferring no rights upon the same owner of the transmission line except those already provided by law.

From the testimony and from experience in other matters involving electric cooperatives and power companies, it appears to us almost universally true that cooperative members prefer a continuation and expansion of cooperative service and territory. On the other hand, industry, particularly heavy industry, just as strongly prefers the service of the power company. Each preference is grounded on understandable and logical reasons and philosophies. The areas of high industrial potential, highly promoted and having pre-existing residential distribution lines of the cooperative with no, or very few, CP&L distribution lines give us greatest pause. We realize that the cooperative has made great contributions to the social and economic betterment of the State and its people by serving areas considered unprofitable by the power companies and, therefore, unserved by them. At the same time, the cooperative is a non-profit organization and the power company can only exist on profits. Traditionally, the cooperative has not attracted industry to its service area while the power company has. The attraction of the capital wealth of industry also builds up residential loads. We are convinced that many areas of the State will be handicapped in, if not precluded from, obtaining industry, unless weight is given to industry's obvious preference for the power company. Further, we hold that the power company is better equipped and better able to serve heavy industrial loads. We are of the considered opinion that it would be harmful both to the cooperative and to the public in an area with industrial potential to assign that area to the cooperative for all purposes. On the other hand, where in many cases the cooperative has historically served the residential, agricultural, and small commercial loads, we think it would be manifestly unjust and duplicative to take this area and their potential residential, agricultural, and commercial loads from the cooperative. Our solution in these areas of high industrial potential where there are cooperative lines is, therefore, to assign the area to the cooperative for load purposes well above any load it now has and, effectively, assign the heavy industrial load in the area to the power company. As in all compromises, this may not be the ideal solution for either supplier, but we believe it will prove best in the long run for the areas and the contending suppliers as well.

(5) The location of municipal electric systems. Notwithstanding that municipally owned and operated systems are not defined as electric suppliers under the Act, and, therefore, are not protected from the competition of these suppliers (nor does our assignment protect these electric suppliers from the competition of municipal systems), we believe areas where municipal systems are directly involved should be left unassigned

wherever possible under the statute. We consider this to be in the interests of economics and harmony in the electric industry of the State.

(6) Telephone exchanges. Whether the public in an area can contact the office of the supplier without paying a long distance charge for telephone service is a factor related to the public convenience and necessity and we have given weight to this in making the territorial assignments herein.

The foregoing are the major considerations taken into account. Our judgment resulting in the assignments hereinafter has given no particular priority or importance to any single factor. Rather, we have sought to balance all factors and, where contradictions appeared, have sought to resolve them in terms of the over-all public interest as set forth in the three general guidelines at the beginning.

Accordingly, IT IS ORDERED:

1. That the areas and territories applied for by the Applicants in these dockets be, and they hereby are, assigned to each respective Applicant by reference to CP&L Exhibit 4, Revised (March 31, 1968), and Central Exhibit 13, Revised (March 31, 1968), which exhibit was received in evidence in these proceedings and which are by this reference incorporated, as follows:

(a) CP&L is hereby assigned for all load purposes all that territory shown in red color except as may be hereinafter excepted or conditioned and except for line rights established by statute.

(b) Central is hereby assigned for all load purposes all that territory shown in green color except as may be hereinafter excepted or conditioned and except for line rights established by statute.

(c) All areas shown in yellow or cross-hatched blue color are hereby assigned and are to be taken as an integral part of the assignments in (a) and (b) above as follows:

(1) To CP&L for all load purposes (except for line rights established by statute) all those areas designated C-5, C-6, C-7, L-1, L-2, L-8, L-9, L-10, L-13, L-17, M-9, and M-16.

(2) To Central for all load purposes (except for line rights established by statute) all those areas designated C-11, C-12, C-18, C-19, H-1, H-5, L-6, L-7, L-12, L-14, M-10, M-13, M-14, M-18, and M-19.

(3) To Central for purposes of loads with contract demands up to and including 150 KW; all loads with contract demands greater than 150 KW are made subject to consumer choice of supplier with prior notice to

the Commission as herein provided: C-13, C-14, C-15, C-16, C-17, L-4, L-5, L-15, L-16, L-19, M-7, M-8, M-11, M-12, Area "A" (adjacent to M-12), M-15, Area "B" (adjacent to M-15).

(4) To the respective parties as agreed upon by them and shown on Revised CP&L Exhibit 4 and Revised Central Exhibit No. 13: C-1, C-2, C-3, C-4, C-9, C-10, C-20, C-21, H-2, H-3, H-4, H-6, H-7, H-8, L-11, L-18, M-1, M-2, M-4, M-6, M-17, R-1, and R-2.

(5) To the parties, the following areas, divided as follows:

L-3: That area north of a line parallel to and 300 feet north of Highway 1416 to CP&L for all load purposes; the area south of this line to Central for all load purposes.

M-3: All of the area east of a line drawn between the intersection of Highways 2007 and 1825 and the intersection of Highways 2005 and 2007 to Central for all load purposes; the remaining area in M-3 to CP&L for all load purposes.

M-5: The remaining portion not agreed to by the parties and left in yellow to CP&L for all load purposes.

(6) To the parties for all load purposes, the following un-numbered areas:

To CP&L: The original C-8 area shown partially in green and partially in red; the uncolored area south of Area L-12; the green area between areas C-7 and C-8; the uncolored triangular area adjacent to M-16 on the north; the undesignated triangular yellow area south of Area "A".

To Central: The yellow area of original M-4 not agreed to by the parties; the uncolored area east of L-13; the undesignated yellow area south of L-12; the uncolored area between C-18 and C-19; the uncolored area adjacent to areas M-8 and M-9; the uncolored area adjacent to areas M-9 and M-18; the northern triangular uncolored area east of area M-13.

2. The following procedure is hereby established for the exercise of consumer choice in cases of loads greater than 150 KW contract demand in these areas assigned to Central on a restricted load basis: The consumer shall make the load for which he is willing to contract, and his choice of supplier with which he chooses to contract, known in writing to each supplier, with simultaneous copy to the Commission prior to contracting for service and prior to the beginning of construction for any service to him by either supplier. The supplier so chosen may proceed to contract with the

consumer and render the service required unless otherwise notified by the Commission within ten (10) days from the Commission's receipt of the notice of choice. Neither supplier shall be obligated, however, to serve the consumer so choosing it except after notice and opportunity to be heard. Grounds for refusal by a chosen supplier to serve such a load may be economic infeasibility, gross duplication of facilities, circuitous routing, the customer's refusal to comply with the supplier's service regulations, or other factual and reasonable grounds which would result in burdensome, oppressive, or discriminatory practices against its respective customers, stockholders, or members. In constructing to serve a customer who chooses the supplier under the conditions herein set out, the supplier shall construct on the most reasonably direct, feasible, and economical route with a view to a minimum of duplication of facilities of any other supplier of electricity; it being further provided that all such construction shall be subject to such further reasonable special or individual project or territorial conditions as the Commission may, after notice and opportunity for hearing, impose either on complaint or on the Commission's own motion.

3. Central and CP&L are directed to prepare jointly and file with this Commission within 45 days of the date this order issues a further "composite," or joint, map showing the territories assigned each of them in these proceedings in accordance with this order. Central's territories assigned without load restriction shall be shown thereon in green color; CP&L's territory shall be shown in red color. That territory assigned to Central with load restrictions shall be shown in green, cross-hatched in red. The parties are not required at this time to file "metes and bounds" narrative descriptions of the territories and areas herein assigned, but the Commission reserves the right to require such filing and the complete or partial location of all boundaries on the ground should the same in its discretion become necessary or appropriate.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. EC-59, SUB 2
DOCKET NO. E-22, SUB 97

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications of Woodstock Electric Membership Corporation and Virginia Electric and Power Company for the assignment of electric service areas in Beaufort, Hyde, and Washington Counties, North Carolina) ORDER

HEARD IN: The Hearing Room of the Commission, February 6, 1968, at 10:00 A.M. and at various recessed days concluding on March 21, 1968

BEFORE AND DECIDED BY: Commissioner Thomas R. Eller, Jr., (Presiding), Chairman Westcott, and Commissioners John W. McDevitt, H. Alexander Biggs, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicants:

William T. Crisp, and
Howard F. Twiggs
Crisp, Twiggs, and Wells
Attorneys at Law
613 Branch Bank & Trust Company Building
Raleigh, North Carolina 27601
For: Woodstock Electric Membership Corporation

Robert C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina 27601

Robert F. Brooks
Hunton, Williams, Gay, Powell & Gibson
Attorneys at Law
700 Building, 7th & Main Street
Richmond, Virginia 23219
For: Virginia Electric and Power Company

For the Intervenors and Protestants:

Robert C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina 27601

Robert F. Brooks
Hunton, Williams, Gay, Powell & Gibson
Attorneys at Law

700 Building, 7th & Main Street
Richmond, Virginia 23219
For: Virginia Electric and Power Company

William T. Crisp, and
Howard F. Twiggs
Crisp, Twiggs, and Wells
Attorneys at Law
613 Branch Bank & Trust Company Building
Raleigh, North Carolina 27601
For: Woodstock Electric Membership Corporation, and for North Carolina Electric Membership Corporation

ELLER, COMMISSIONER: These consolidated proceedings arise as follows: G.S. 62-110.2(c)(1), enacted in 1965, directs the Commission to assign to electric suppliers all areas outside the corporate limits of municipalities and more than 300 feet from the lines of all electric suppliers.* Both Woodstock Electric Membership Corporation (hereinafter called "Woodstock") and Virginia Electric and Power Company (hereinafter called "VEPCO") render electric service in parts of Beaufort County, Hyde County, and Washington County. Pursuant to Commission rules, Woodstock, on September 5, 1967, made application for assignment to it of large areas in each of the aforesaid counties, and attached a map showing the areas it claimed for assignment purposes. VEPCO, on October 9, 1967, likewise filed application setting forth large areas in the same counties it sought to have assigned to it, and attached a map showing those areas. From a comparison of the two maps it became apparent that the claims of the parties overlapped in considerable degree.

---

*Electric power companies and electric membership corporations are defined in the Act as "electric suppliers;" municipally-owned systems are not. G.S. 62-110.2(3).

The two applications were consolidated in the same proceedings and maps were developed by the parties for use in the consolidated proceedings. The maps, VEPCO Exhibit No. 2 and Woodstock Exhibit No. 1, use a common coloring system, substantially as follows:

(1) Those areas sought by VEPCO but not by Woodstock are shown in red.

(2) Those areas sought by Woodstock but not by VEPCO are shown in green.

(3) Those areas sought by both parties are shown in yellow.

(4) Those areas sought by Woodstock, but requested by VEPCO to be left unassigned or assigned to VEPCO, are shown in blue.

The two maps differ in several respects: (1) VEPCO shows eleven (11) areas, while Woodstock's map shows nine (9) areas. However, the variance results from the way the total areas applied for were divided by the engineers preparing the maps separately. The maps cover virtually identically the same total areas covered by the two applications; (2) While both parties used the initials of the county in which the area is located, with a sub-arabic number to designate the separate areas within the same county (e.g. "B-1" signifying an area in Beaufort County), they did not use the same arabic sequence. To illustrate: The "B-1" area on Woodstock's map is "B-6" on VEPCO's map. This difference in sequential numbering carries throughout the two maps, although the areas are substantially the same and are colored the same on the two maps. For convenience in discussion and assignment in these proceedings, we shall not give the two separate numbers for each area, but shall make all such designations by reference to VEPCO Exhibit No. 2; (3) The VEPCO map carries its color legend into counties adjoining the counties involved in the two applications, while the Woodstock map does not. Woodstock objected to this feature of VEPCO's map, and the Commission overruled. During the hearing, Woodstock, over VEPCO's objection, was permitted to spot the residences of certain of its witnesses and directors on its map by super-imposing gummed paper circles and ellipses. Other minor controversies centered around the two maps as will be revealed by the record.

The Commission required publication of Notice of the Pendency of the Proceedings in newspapers having general circulation in the counties affected and that maps be made available for public inspection in the areas. The parties reasonably complied with this requirement.

Pursuant to the notice given, certain interventions were initiated from other parties and these were ruled upon as appears of record. VEPCO was admitted as a party protestant in the docket involving Woodstock's application, and vice versa.

Certain amendments were made to the applications and maps for technical and clerical reasons, but neither the applications nor the maps used, i.e., VEPCO Exhibit No. 2 and Woodstock Exhibit No. 1, were materially changed from those upon which notice was given.

The proceedings came on for hearing on February 6, 1968, and, after lengthy hearings and necessary recesses, was concluded on March 21, 1968. Written proposed findings of fact and conclusions of law and briefs of counsel were permitted as provided by G.S. 62-78. Thereafter, in the Commission's discretion, oral arguments of counsel were heard.

Following the Commission's preliminary decision and before its order could issue, counsel for the principals filed a number of motions and counter-motions related to purported negotiations, settlements, and agreements among them subsequent to the closing of the record. As a result of this correspondence from counsel for the parties, it appears there are at this time no mutually agreed stipulations, among all parties to the proceeding, nor are there any material changes in conditions, or newly discovered evidence, or other such matters justifying the reopening of proceedings for further hearings or arguments in the docket at this time. G.S. 62-110.2(c) places the duty on the Utilities Commission to assign service areas in accordance with standards and factors prescribed in the Statute, and accordingly, the Commission in reaching decision and order has given no consideration to any of the ex parte filings made by counsel subsequent to the oral arguments held on August 7, 1968.

In general, the testimony and exhibits presented in the hearings bear upon:

(1) Explanations and descriptions of methods and philosophies used in preparing the maps, boundaries, and territorial claims of the respective parties.

(2) The characteristics of the two Applicants as to type of organization, corporate authority, personnel (their offices, location, and qualifications), available facilities and equipment, methods and philosophies of operation, present financial ability, ability to attract and serve various classes of customers, and ability to attract capital for future service requirements.

(3) The needs, preferences, and convenience of affected members of the public.

(4) Available telephone and other utility services.

(5) Industrial locations, present and prospective.

(6) Location of the lines and types of lines of the respective suppliers for the areas. It should be pointed out that, while the Cities of Belhaven and Washington were discussed as having lines in parts of the general area, no detailed and definitive showing was made on the locations and types of lines the municipalities have in the areas.

Both Applicants relied primarily upon their maps for describing the boundaries of the areas sought. The principal difference in mechanical descriptions of the territories sought results from the two different approaches of the parties. Primarily, but not exclusively, Woodstock followed the "midpoint" concept; i.e., it took a map on which were imposed the electric lines of each party and, in

general, drew a line of demarcation approximately midway between the extremities of the lines of the two systems. VEPCO primarily followed natural monuments such as highways, rivers, political boundaries, etc., without regard to proximity of the line as drawn to its own or Woodstock's lines. [Both parties reduced their map depictions to "metes and bounds" narrative descriptions, although neither party, of course, based its descriptions on actual surveys on the ground.]

Upon the evidence adduced, we make the following

FINDINGS OF FACT

1. Both VEPCO and Woodstock are electric suppliers as defined by Section 62-110.2(a)(3) of the North Carolina General Statutes; both are properly before the Commission, which has jurisdiction over the subject matter of the proceeding. None of the municipalities having lines in the area are electric suppliers as defined by the statute; nor were any of them parties to the proceeding.

2. VEPCO is an electric public utility furnishing wholesale and retail electric service for profit to the general public in, among other areas, Beaufort County, Hyde County, and Washington County. VEPCO generates the preponderance of the electric power it sells.

3. Woodstock is a nonprofit electric membership corporation furnishing electric service to its members in the various areas in the same three counties named in Finding No. 2. Woodstock does not generate electric power, but purchases the preponderance of its total requirements as a wholesale customer of VEPCO.

4. Both VEPCO and Woodstock are capable of supplying, and do supply, good, adequate, and dependable electric service for the requirements of their existing customers and members, respectively, in the areas of the three counties mentioned.

5. The North Carolina Utilities Commission has extensive jurisdiction over the rates, services, and level of earnings of VEPCO; it has limited jurisdiction over Woodstock relating primarily to the assignment of territory, preventing or relieving promotional rebates, preferences, and unjust discriminations in service and rates, compelling efficient, adequate, and dependable service, and the licensing of generating plants.

6. The total area involved in the applications is generally outlined on the south by the Pamlico River, on the southwestern corner by the City of Washington, on the northwestern side by the City of Plymouth and the Roanoke River, on the north by Albemarle Sound, on the northeast by Tyrrell County, Pettigrew State Park (Lake Phelps) and Alligator Lake, and on the southeast by Swan Quarter.

Included within this general outline are the Towns of Pantego, Pinetown, Belhaven, Bath, Roper, Creswell, and Cherry, together with numerous unincorporated communities, points, and places. The Dismal Swamp lies in the central portion of the total area. The Intracoastal Waterway winds northerly from the Pamlico River to the Pungo River and thence generally northeast out of the area. The Pungo River runs generally southeast from Plymouth practically through the center of the total area to confluence with the Pamlico. Bath Creek, Pungo Creek, and Little Creek are in the southern portion of the total area. Scuppernong River, Deep Creek, and Bull Creek are in the north of the general area. The Norfolk & Southern Railway runs through the area northeast from the City of Washington to Pinetown from which it branches northeast to Pantego and Belhaven and northerly to Plymouth and points north.

7. The entire area of the applications, being situate outside the corporate limits of municipalities, and more than 300 feet from the lines of another supplier as defined by the Act, must be described as rural and agricultural. Some portions of the general area, as will be discussed more particularly later, are areas of industrial potential, but they cannot be presently described as industrialized. Topographically, the area is low and flat with a number of swamps. Drainage and development of much of the low, swampy areas for agricultural purposes is underway.

8. The historical development of electrical facilities in the area as a whole may be described as follows: For many years, VEPCO has served Woodstock as well as the municipal systems of the Cities of Washington and Belhaven at wholesale. VEPCO serves the Towns of Roper, Creswell, Cherry, and Plymouth at retail. VEPCO's distribution facilities in the general area radiate almost exclusively southwest and northeast from the City of Plymouth and in all directions from Roper, Creswell, and Cherry. VEPCO's distribution facilities are concentrated almost exclusively in the northern third of the total area. For the purpose of moving bulk power, VEPCO has a 34.5 KV line in the southern portion of the total area extending generally northeasterly and paralleling the railroad from the City of Washington to the Towns of Pantego and Belhaven. VEPCO has one (1) retail distribution customer on this line at approximately 400 KW demand.

Woodstock has its headquarters at Pantego in the south central portion of the total area, at which point the cooperative also takes its power from VEPCO at wholesale. Woodstock's distribution facilities extend in all directions from Pantego and, in general, may be said to cover the southern two-thirds of the area, reaching south to the Pamlico, southwest to the City of Washington, northwest to the City of Plymouth, north to and beyond the western edge of Pettigrew State Park (Lake Phelps), northeast to a point near the southwestern edge of Alligator Lake, and east to Swan Quarter, covering generally all intermediate areas.

Woodstock serves Pantego and a small part of Pinetown at retail.

The distribution facilities of the City of Washington and Woodstock overlap and intertwine to a substantial degree in the area outlying the City of Washington and extending east along the Pamlico as far as Bath and Bayview, and northwest to and through Pinetown.

9. There are virtually no facilities of any supplier as defined in the Act other than VEPCO in the portions of the total area shown in red on the maps of the parties and which VEPCO seeks to have assigned to it without opposition in these proceedings. In one area shown in red and sought without opposition by VEPCO, to wit, the Great Swamp Area northeast of the City of Washington in Beaufort County, there are no lines of consequence by a supplier as defined by the Act, although there appear to be a number of lines of the City of Washington in the southwestern portion of said red area.

10. There are virtually no facilities of any supplier as defined in the Act other than Woodstock in the portions of the total area shown in green on the maps of the parties and which Woodstock seeks to have assigned to it without opposition in these proceedings, although as stated, there appear to be a number of lines of the City of Washington in said green areas.

11. In one large area in Beaufort County shown in blue on the maps of the parties (marked B-6 on VEPCO Exhibit No. 2 and hereafter referred to as the "B-6" area) there are no lines of any supplier as defined in the Act other than Woodstock, although there are lines of the City of Washington as hereinbefore discussed.

This area is bounded by the Pamlico River on the south, Bath Creek on the west, Pungo Creek on the north and the Pungo River as it leads into the Pamlico River on the east.

Woodstock seeks to have this area assigned to it; VEPCO seeks to have the area left unassigned or, in the alternative, assigned to VEPCO.

12. In the areas colored blue on the maps of the parties and marked B-1 and B-3 on VEPCO Exhibit No. 2 (and hereafter referred to by reference to the VEPCO Exhibit) there are virtually no facilities of any supplier as defined in the Act other than Woodstock, except for VEPCO's 34.5 KV line through Area B-3 and the VEPCO retail customer in Area B-1, as previously found. The evidence reveals that the City of Washington has lines in the area, but the evidence does not permit their specific identification, location, or description.

13. The areas numbered H-1, W-1, W-2, W-3, W-4, W-5, W-6, W-7, W-8, W-9, W-10, W-11, and B-4 (by VEPCO Exhibit No. 2),

and colored in yellow on the maps of both parties have either no lines or very limited "dead-end" lines of any supplier as defined by the Act. These areas are in large measure undeveloped, unpopulated areas sought by both Woodstock and VEPCO. The location of the areas in proximity to other areas served by the respective suppliers predominates over the actual location of the suppliers' lines in the territories. In some of these areas, particularly B-4 and B-5, there are lines of municipal systems, but the evidence does not permit their specific identification, location, or description.

14. The area marked B-2 (by VEPCO Exhibit No. 2) and colored yellow on the maps of the parties has the aforesaid 34.5 KV line running east-west through the south central portion. The area marked B-5 (by VEPCO Exhibit No. 2) and colored yellow has the aforesaid 34.5 KV line running along the northern border thereof. There are no other lines of a supplier as defined by the Act in either area. Woodstock and VEPCO each seek to have the areas assigned to themselves. The evidence indicates the City of Washington has substantial distribution facilities within the areas, but the evidence does not permit identification, description, and evaluation of these facilities.

15. The areas designated B-1, B-2, B-3, B-4, and B-5 (by VEPCO's Exhibit No. 2) are areas of potential industrial development in that they are characterized by proximity to the railroad, major highways, have available sources of large power supply, are topographically suited for industry, have good communications facilities, and are near the population centers of the total area.

16. The area designated B-6 (by VEPCO Exhibit No. 2) as previously described is an area of great industrial potential in that it has been established that the area contains one of the richest phosphate deposits in the United States, is under active consideration for phosphate mining operations in the order of those now at the so-called Texasgulf Sulfur site immediately south of and directly across the Pamlico River. Much of the area is already under lease or option for large phosphate mining operations. These mining operations and processes usually require complex and technical electric power accommodations, very large blocks of available power, alternate sources of power supply, and experienced supplier personnel readily available and technically trained. Further, such mining operations tend to attract allied industrials, such as chemicals and fertilizer, having large power requirements, and requiring large capital investments to install service.

17. Industrial and manufacturing concerns tend to locate on and demand the services of VEPCO as opposed to Woodstock. There are many reasons for this. Some industries are philosophically opposed to, and wary of, becoming members in cooperatives where they have no more protection than a single vote in rate and policy matters; i.e., they prefer

the regulation of the State Commission to the regulation of the cooperatives' membership and the REA. Others base their preference on the electric utility's financial strength and its ability to supply operational expertise, specialized equipment, alternate and emergency supplies of energy and many others. Industries usually have more than one available site for location and, all other things being equal, tend to choose that site served or to be served by VEPCO and tend not to choose the site to be served by Woodstock. While the phosphate deposits in the B-6 area will require the mining industry to locate there without regard to which supplier is assigned the area, the testimony of mining officials is to the effect that assignment to Woodstock would tend to cause their companies not to perform all their mining processes on site and that they probably would only mine the basic product and ship it elsewhere for operations and processes requiring heavy electric loads. The testimony further indicates that manufacturers and producers other than mining will tend not to locate near the mines if the area is assigned exclusively to Woodstock.

18. Of the total territory sought (196 square miles) throughout the three (3) counties involved, approximately 22.6% (270 square miles) is claimed by VEPCO without substantial controversy; 56.7% (677 square miles) is claimed by Woodstock without substantial controversy; and 20.7% (249 square miles shown in 15 separately designated yellow and three (3) separately designated blue areas) is claimed in one way or another by both parties.

19. The areas where Woodstock's facilities are located are predominantly residential and farming, or rural, areas. In 1967 Woodstock sold 175,145,490 kilowatt hours (KWH) of electricity. It serves 3,531 members, of which 3,206 are residential customers. Woodstock serves two (2) industrial customers with demands greater than 50 KW. Its largest service demand is to Coastal Lumber Company, with a demand exceeding 240 KW and possibly as high as 400 KW demand.

20. The portions of the total area in which VEPCO's facilities are located are also predominantly residential and farming, or rural, areas. However, VEPCO has a number of very large power users in this and other states. It has a permanent staff of experts in promoting industrial development and attending to complex power supply and load requirements.

21. Woodstock has 601 miles of distribution lines in the three-county area. VEPCO has approximately one-third (1/3) as many miles distribution facilities in the total area as Woodstock in addition to 60 miles of 34.5 KV line and 20 miles of 115 KV line.

22. At December 31, 1967, VEPCO had $380,337,681 in equity capital and retained earnings; Woodstock had "patronage capital" amounting to $549,411.

23. VEPCO is financed by capital furnished from the sale of securities in the financial markets and from internally generated funds. Its bonds are rated AA, and it has a proven ability to raise large sums of capital on comparatively short notice. Woodstock is dependent upon appropriations of the United States Congress and the approval of the Rural Electrification Administration administrator and upon internally generated funds for its capital. While Woodstock has never been called upon to provide service for which it could not obtain capital, it nevertheless has not been called upon to raise capital to meet the electric needs of extremely large industrial customers.

24. Woodstock is organized and exists for the purpose of furnishing electricity to persons in rural areas not otherwise having central station service. It is not organized to, and does not operate on, the basis of "pecuniary profit," as does VEPCO. For this reason, the procurement of large volume industrial loads is not as fully compatible with the corporate and public objectives of Woodstock as it is with VEPCO.

CONCLUSIONS

We believe the underlying guides to territorial assignments between electric suppliers are:

(1) The reasonable present and probable future electric power needs and preferences of the public in the affected areas as a whole.

(2) The establishment of territorial integrity for the respective suppliers reasonably consistent with their financial and operational abilities and objectives.

(3) The avoidance of future unnecessary duplication of electric facilities to the maximum reasonable extent.

Specifically, in making the territorial assignments hereinafter, we have considered and weighed the following factors, among others:

(1) The physical characteristics of the areas involved. This includes:

(a) The size of the area to be assigned. We consider it generally inadvisable to assign very small, isolated areas to a supplier since small, "island" territories would be difficult to administer;

(b) The topography of the area. Such natural and man-made features as rivers, mountains, railroads, and highways are frequently natural boundaries of communities of interest and should be considered;

(c) The location and population density of an area. A built-up area immediately adjacent to a municipality in which one supplier already serves is related to the municipality and the supplier serving within the municipality;

(d) Whether an area is essentially residential, agricultural, commercial, light industrial, or heavy industrial. These characteristics have a bearing on the needs of the area as well as on the ability of a supplier to serve those needs.

(2) The existence of electric lines in the area. This includes:

(a) Whether the lines are for transmission or distribution. For example, we consider that the mere existence of a transmission line through a residential or agricultural area of itself has little bearing on whether the area should be assigned to the owner of the transmission line, for it generally is neither practicable from an engineering standpoint nor feasible economically to perform the step-down transformation which would be necessary to serve a residential, small commercial, or agricultural load directly from the line. On the other hand, the existence of a transmission line through an area with industrial potential may have a direct bearing on assignment of that area because transformation directly from the line to meet a large demand would be both practicable and feasible;

(b) If the lines are distribution lines, their voltage level and type of conductors must be considered. For example, a single phase distribution line is not necessarily duplicated by the construction of a three-phase line to serve a load which the single phase line will not accommodate;

(c) The historic existence of the lines. If a line is historically a "tie-line" not built to serve customers, or if it was built solely for territorial purposes and is not serving customers, this is insufficient to justify an assignment wholly on the basis of preexisting lines. On the other hand, if a supplier has active, adequate distribution lines in an area and historically has sought to and has served the particular needs of the area, we believe this should be given weight toward assigning that area and that load to the historic supplier.

(3) Electrical Capability. This includes the location of lines, their type, and their electrical capabilities as already discussed. In addition, however, it includes facilities the respective suppliers have in the general area which would benefit the area and permit economical service. For example, the presence or absence of nearby substations, offices where complaints may be taken, maintenance and repair crews for both ordinary and emergency service, etc., must be considered. Where one supplier has a large convenient operation offering multiple services and the other supplier is limited, we have given weight to the supplier who can render service more readily and economically than the other. Travel time of repairmen, installers, etc., is not only an expense item to be considered, but a significant factor in service reliability. In making these assignments, we have given consideration to comparisons of travel time and distances from the respective supplier's offices to points in the areas.

(4) The needs and preferences of the public in the area in question. Pertinent to this consideration is the growth potential and type of future service needs of the areas in question. While such considerations are admittedly speculative to some extent, we are convinced it must not be excluded from consideration. In this regard, as already alluded, we have weighed as best we can whether each area involved in the main has residential, commercial, or industrial potential. For example, while the statute accords each supplier a 600-foot corridor along all existing lines - whether transmission or distribution - we hold it to be more in accordance with public convenience and necessity if, rather than arbitrarily establishing a one-mile corridor along all transmission lines, we establish a wider corridor in certain areas with industrial potential or in areas where it is reasonable to expect the owner of the transmission line to serve residential and commercial loads while in other areas conferring no rights upon the same owner of the transmission line except those already provided by law.

From the testimony and from experience in other matters involving electric cooperatives and power companies, it appears to us almost universally true that cooperative members prefer a continuation and expansion of cooperative service and territory. On the other hand, industry, particularly heavy industry, just as strongly prefers the service of the power company. Each preference is grounded on understandable and realistic considerations and philosophies. The areas of high industrial potential, highly promoted and having preexisting residential distribution lines of the cooperative with no, or very few, VEPCO distribution lines give us greatest pause. We realize that the cooperative has made great contributions

to the social and economic betterment of the State and its people by serving areas considered unprofitable by the power companies and, therefore, unserved by them. At the same time, the cooperative is a nonprofit organization and the power company can only exist on profits. Traditionally, the cooperative has not attracted industry to its service area while the power company has. The attraction of the capital wealth of industry also builds up residential loads. We are convinced that many areas of the State will be handicapped in, if not precluded from, obtaining industry, unless weight is given to industry's obvious preference for the power company. Further, we hold that the power company is better equipped and better able to serve heavy industrial loads. We are of the considered opinion that it would be harmful both to the cooperative and to the public in an area with industrial potential to assign that area to the cooperative for all purposes. On the other hand, where in many cases the cooperative has historically served the residential, agricultural, and small commercial loads, we think it would be manifestly unjust and duplicative to take this area and their potential residential, agricultural, and commercial loads from the cooperative. Our solution in these areas of high industrial potential where there are cooperative lines is, therefore, to assign the area to the cooperative for certain load purposes and, effectively, assign the heavy industrial load in the area to both the cooperative and the power company. We say "assign to both" because either is left free to serve the heavier load upon reasonable choice of the consumer. If either is chosen to provide a service which it cannot reasonably provide, or which the other supplier more reasonably should provide, we shall consider the individual circumstances when they arise. We are aware that this may not at first appear the ideal solution for either supplier, but we believe it will prove best in the long run for the areas and the contending suppliers as well and is consistent with the spirit of the statutes under which our duties arise.

(5) The location of municipal electric systems. Nothwithstanding that municipally owned and operated systems are not defined as electric suppliers under the Act, and, therefore, are not protected from the competition of these suppliers (nor does our assignment protect these electric suppliers from the competition of municipal systems), we would prefer to make assignments in cognizance of the areas where municipal systems are directly involved. We consider this to be in the interests of economics and harmony in the electric industry of the State. In this instance there appears to be a high incidence of municipal lines in some of all the areas involved, whether red, green, blue, or yellow. The record does not, as already said, permit us to determine that these areas be left unassigned under the statute. To do so could do injustice to the suppliers seeking to

serve the areas and to the people in those areas. There arises from the record no inference that the competitive relationship as among the cooperative, the power company, and the several municipal systems has been or will become destructive. Further, in making the assignments under this Order, we do not encourage - in fact, we shall attempt reasonably to prevent - any exodus en masse from municipal systems to the systems of either the power company or the cooperative. Before ordering an assigned supplier to serve a customer proximate to the lines of a municipal system, we shall - as we have done in the past - look carefully into the project's economic feasibility, its potentiality for waste and duplication, and the quality, type, and manner of service available from said proximate municipal facilities. (See Docket E-22, Sub 81, May 4, 1966.)

(6) Telephone exchanges. Whether the public in an area can contact the office of the supplier without paying a long distance charge for telephone service is a factor related to the public convenience and necessity and we have given weight to this in making the territorial assignments herein.

The foregoing are the major considerations taken into account. Our judgment resulting in the assignments hereinafter has given no particular priority or importance to any single factor. Rather, we have sought to balance all factors and, where contradictions appeared, have sought to resolve them in terms of the overall public interest as set forth in the three general guidelines at the beginning.

Accordingly, IT IS ORDERED:

1. That the areas and territories applied for by the Applicants in these dockets be, and they hereby are, assigned to each respective Applicant by reference to VEPCO Exhibit No. 2 which exhibit was received in evidence in these proceedings and which is by this reference incorporated, as follows:

(a) VEPCO is hereby assigned for all load purposes all that territory shown in red color except as may be hereinafter excepted or conditioned and except for line rights established by statute.

(b) Woodstock is hereby assigned for all load purposes all that territory shown in green color except as may be hereinafter excepted or conditioned and except for line rights established by statute.

(c) All areas shown in yellow or blue color are hereby assigned and are to be taken as an integral part of the assignments in (a) and (b) above as follows:

(1) To VEPCO for all load purposes (except for line rights established by statute) all those areas designated W-1, W-2, W-5, W-7, W-8, W-9, W-10, and W-11.

(2) To Woodstock for all load purposes (except for line rights established by statute) all those areas designated W-3, W-4, W-6, and H-1.

(3) To Woodstock for purposes of loads up to and including 400 KW demand; all loads with contract demands greater than 400 KW being hereby assigned jointly to VEPCO and Woodstock; provided that this joint assignment is made subject to the consumers' reasonable choice of supplier, with prior notice to the Commission as herein provided, all those areas designated B-1, B-2, B-3, B-4, B-5, and B-6.

2. The following procedure is hereby established for the exercise of consumer choice in cases of loads greater than 400 KW contract demand in those areas assigned to Woodstock and VEPCO jointly for such load purposes: The consumer shall make the load for which he is willing to contract, and his choice of supplier with which he chooses to contract, known in writing to each supplier, with simultaneous copy to the Commission prior to contracting for service and prior to the beginning of construction for any service to him by either supplier. The supplier so chosen may proceed to contract with the consumer and render the service required unless otherwise notified by the Commission within ten (10) days from the Commission's receipt of the notice of choice. Neither supplier shall be obligated, however, to serve the consumer so choosing it except after notice and opportunity to be heard. Grounds for refusal by a chosen supplier to serve such a load may be economic infeasibility, gross duplication of facilities, circuitous routing, the customer's refusal to comply with the supplier's service regulations, or other factual and reasonable grounds which would result in burdensome, oppressive, or discriminatory practices against its respective customers, stockholders, or members. In constructing to serve a customer who chooses the supplier under the conditions herein set out, the supplier shall construct on the most reasonably direct, feasible, and economical route with a view to a minimum of duplication of facilities of any other supplier of electricity; it being further provided that all such construction shall be subject to such further reasonable special or individual project or territorial conditions as the Commission may, after notice and opportunity for hearing, impose either on complaint or on the Commission's own motion.

3. Woodstock and VEPCO are directed to prepare jointly and file with this Commission within 45 days of the date this order issues a further "composite", or joint, map showing the territories assigned each of them in these

proceedings in accordance with this order. Woodstock's territory assigned without load restriction shall be shown thereon in green color; VEPCO's territory shall be shown in red color. That territory assigned to Woodstock with joint assignment to Woodstock and VEPCO for loads above 400 KW contract demand shall be shown in green, cross-hatched in red. The parties are not required at this time to file "metes and bounds" narrative descriptions of the territories and areas herein assigned, but the Commission reserves the right to require such filing and the complete or partial location of all boundaries on the ground should the same in its discretion become necessary or appropriate.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. EC-59, SUB 2
DOCKET NO. E-22, SUB 97

BIGGS, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART: To the extent that the territorial assignments made under the majority order completely ignore the existence and locations of the electric lines of the City of Washington and contravene the stated policy of the Commission with respect to such municipal lines as set forth in order entered in Dockets No. EC-58, Sub 2, and E-2, Sub 145, I am constrained to dissent in part to said order. The detailed reasons for my disagreement in this respect are as follows:

1. I disagree with the majority's finding of fact which states that the substantial distribution facilities of the City of Washington are not sufficiently identified in the evidence to warrant consideration.

The colored map, marked VEPCO Exhibit No. 2 and adopted by all parties, shows the location of the City of Washington's lines outside its corporate limits in the same detail that it shows the location of the VEPCO and Woodstock lines, and the testimony given with reference to said map further identifies these lines. This exhibit also shows that large areas outside the corporate limits of Washington, lying north and east of the city, are served exclusively by the city electric system. For example, in the B5 area assigned to Woodstock by the majority order, neither Woodstock nor VEPCO serve a single customer although the area is heavily saturated with the city's facilities. The same is true of the southern part of a red area assigned to VEPCO just north of Washington. Certainly, these areas can be segregated and left unassigned without encroaching upon the potential of the present facilities of VEPCO and Woodstock.

In the green area assigned to the co-operative, lying immediately east of the City of Washington, the city has lines extending for many miles and into many sections. Such lines extend as far as Bayview and Yeatsville. Although these lines, in many instances, cross and intermingle somewhat with the co-operative's lines, they do not substantially duplicate such facilities.

2. The failure to recognize the city's facilities is contrary to the stated policy of the Commission and to applicable law.

The Commission has heretofore evinced an intent to respect the investment represented by municipal electric systems. This attitude is demonstrated by the fact that the territorial assignments already made by the Commission have in every instance but one honored the electric supply operations of municipalities outside their corporate limits by leaving unassigned those areas served exclusively by them. Such treatment has been made in the case of 17 cities and towns, and there is now pending before the Commission applications for similar treatment for the operations of six more cities and towns.

In the order entered in Dockets No. EC-58, Sub 2, and E-2, Sub 145, involving the assignment of territory in Chatham, Harnett, Lee, Moore, and Randolph Counties (hereinafter called the Central - CP&L case) the Commission stated as follows:

> Notwithstanding that municipally owned and operated systems are not defined as electric suppliers under the Act, and, therefore, are not protected from the competition of these suppliers (nor does our assignment protect these electric suppliers from the competition of municipal systems), we believe areas where municipal systems are directly involved should be left unassigned wherever possible under the statute. We consider this to be in the interests of economics and harmony in the electric industry of the State."

The concept that the Commission should not ignore the existence of the utilities service by unregulated entities is not new. For example, in Docket No. P-10, Sub 55, decided in 1956, an order was entered by the Commission dismissing the plea of Randolph Telephone Membership Corporation (an unregulated co-operative) that its facilities and service area be given recognition. This decision was appealed to the Superior Court in Randolph County wherein judgment was entered reversing the Commission. In reaching its decision, the court stated as follows:

> "...the Utilities Commission disregarded or misconceived the law and committed reversible error in the following respects:

"(a) In failing to give weight to and in failing to recognize the existence of the Randolph Telephone Membership Corporation or the telephone service which it proposes to and is in the process of rendering....

* * *

"(c) In failing to recognize or to apply with respect to Randolph Telephone Membership Corporation the public policy implicit in the North Carolina statutes, to prevent unnecessary duplication in telephone service, and the public policy to give reasonable protection to the territory which the telephone membership corporation had undertaken to serve and was preparing to serve, entitling it to protection until another utility is ordered to invade its territory under proper order of the Utilities Commission upon a proper showing that, in the light of all the facts and circumstances, the interest of the public reasonably requires that a public utility under the jurisdiction of the Utilities Commission, be authorized or, in a proper case, directed to serve a part or all the territory.

"(d) In failing to give adequate weight to the rule that the "'public convenience and necessity'" relates to the public and not to an individual or individuals."

The only difference that I can see between the facts and circumstances of this case and of those involving the 17 towns and cities where outside areas were left unassigned is that in those cases the electric suppliers agreed for the areas to be unassigned and in this case the suppliers have applied for assignment of the areas. The evidence in this case as to the location of the city's lines is, if anything, stronger than in the other cases where territories were left unassigned, and I feel that the action of the majority in making the assignments in this case is contradictory of the Commission's stated policy, of the law declared in the aforementioned judgment, and of the public policy which would discourage duplication of service.

3. There is no showing that "public convenience and necessity" requires an assignment to VEPCO or Woodstock of the areas exclusively served by and saturated with the facilities of the City of Washington.

In authorizing and directing the Commission to assign service areas to the various electric suppliers in this State, the General Assembly in G.S. 62-110.2(c)(1) stated as follows:

"The Commission shall make assignments of areas in accordance with public convenience and necessity, considering, among other things, the location of existing lines and facilities of electric suppliers and the

adequacy and dependability of the service of electric suppliers, but not considering rate differentials among electric supplers." (Emphasis added)

As previously noted, the Commission has already determined that areas served by municipal systems and lying outside corporate limits should be left unassigned wherever possible under the statute, and that in accordance with this policy it has left such outside areas unassigned in the case of 17 cities and towns. This policy and the leaving of areas unassigned in these instances are not predicated upon any feeling that the cities' lines are entitled to a territorial protection in these areas, but are based largely upon the conclusion that where an area is served entirely by city facilities it is not in accordance with "public convenience and necessity" to assign those areas to other suppliers who have no lines in the area.

I consider that the public convenience and necessity in this case does not require an assignment to VEPCO or Woodstock of areas served exclusively by the City of Washington.

4. An assignment of areas served exclusively by the City of Washington can only result in unnecessary and destructive duplication of facilities.

The Commission's authority and direction to make assignments under G.S. 62-110.2(c)(1) is prefaced by the statement that such authority and direction is given "in order to avoid unnecessary duplication of electric facilities". The electric line facilities of the City of Washington represent a substantial capital investment, and the assignment of areas served by these facilities to another supplier, having no lines in said areas, can only lead to a destructive duplication of the city's lines and to a substantial decreasing of the capital value of such facilities. I cannot believe that the legislature intended such result.

5. The assignment to VEPCO and Woodstock of areas served exclusively by the City of Washington would be burdensome to the company and co-operative.

The assignment of territory to an electric supplier carries with it the duty to extend service upon request throughout the territory. The assignment of areas served exclusively by the City of Washington to VEPCO and Woodstock could create situations involving serious economic burdens. For example, a residential customer in the heart of an area assigned to Woodstock but served by the city system might decide to apply to the co-op for service for personal reasons unrelated to quality or cost of service, in which case the co-operative would have to construct a line duplicating city lines in order to extend service. The only recourse that the co-op would have in such case would be to apply to the Commission for relief from the duty to serve.

This would be a cumbersome and time-consuming procedure and one that would invariably frustrate the needs and desires of the consumer. In fact, it is perfectly clear that as a practical matter such a consumer would not have a chance of obtaining service from the supplier to whom the area is assigned unless his business was large enough to justify the extension of the facilities, in which case the supplier would not be concerned about the resultant duplication. If this is so, it is all the more reason for not assigning the territory but for the Commission's leaving the area unassigned as it has done in the case of every other municipal system having outside operations except one.

Except as to the areas served by the City of Washington, I concur in the assignments made under the majority order.

M. Alexander Biggs, Jr., Commissioner

DOCKET NO. E-2, SUB 156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company) for Certificate of Public Convenience and) Necessity and the Authority to Lease and) RECOMMENDED Operate the Electric Distribution System) ORDER Owned by the Town of Elm City, North Carolina)	

HEARD IN: The Conference Room of the Commission at its Temporary Offices, Corner of Edenton and Wilmington Streets, Raleigh, North Carolina, on February 16, 1968, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott

APPEARANCES:

For the Applicant, Carolina Power & Light Company:

Charles F. Rouse
Senior Counsel
Carolina Power & Light Company
P. O. Box 1551, Raleigh, North Carolina 27602

For the Town of Elm City, North Carolina:

Bobby F. Jones
Lucas, Rand, Rose, Meyer & Jones
Attorneys at Law
Wilson, North Carolina

WESTCOTT, CHAIRMAN: On January 4, 1968, Carolina Power & Light Company filed with the North Carolina Utilities Commission an application seeking authority to acquire by lease and to operate the electric distribution system owned

by the Town of Elm City, North Carolina, pursuant to the provisions of a lease agreement between the Town and the Company dated December 28, 1967, a copy of which agreement was attached to and made a part of the application. This matter was set for hearing at 2:00 p.m. on February 16, 1968, and notice of such hearing was issued by the Commission on January 19, 1968. Such notice was duly published on January 24 and January 31, 1968, in The Wilson Daily Times, a newspaper of general circulation in the Town of Elm City, North Carolina. No interventions or protests were filed.

This proceeding came on for hearing and was heard at the time and place specified in the above-mentioned notice. The Applicant and the Town of Elm City were represented by their respective counsel. Also present were two members of the Commission's staff, L. M. Keever, Electrical Engineer, and S. J. Painter, Director of Accounting. No one appeared at the hearing in opposition to approval of the application.

At the hearing the Applicant offered the testimony of three of its employees; namely, Robert N. Hadley, District Manager of the Raleigh District, R. T. Presson, Assistant Director of Rates and Regulation, and H. T. Buchanan, Assistant Treasurer. It also offered and made a part of the record certain documentary evidence identified as Applicant's Exhibits Nos. 1 through 11. At the conclusion of the evidence counsel for the Applicant and for the Town of Elm City waived the filing of briefs, but counsel for the Town of Elm City made a statement in support of the application.

After consideration of the application, the evidence presented at the hearing, and the Commission's public records, the Commission makes the following

FINDINGS OF FACT

1. Applicant, Carolina Power & Light Company, is a corporation organized and existing under the laws of the State of North Carolina, and is a public utility operating in North Carolina and South Carolina, where it is engaged in generating, transmitting, delivering, and furnishing electricity to the public for compensation. It maintains and operates electric lines near the Town of Elm City, North Carolina, including a 110 KV electric transmission line which is in close proximity to the Town's corporate limits.

2. The Town of Elm City is a North Carolina municipal corporation, which owns and operates an electric distribution system serving approximately 500 customers who reside within its corporate limits and in a small rural area adjacent thereto, including 37 customers served by the City of Wilson in areas recently annexed by the Town through facilities which are to be acquired by the Town. The City of Wilson, North Carolina, a wholesale electric customer of

Applicant, now supplies electricity to the Town of Elm City, which has no electric generating facilities of its own.

3. The electric distribution system of the Town of Elm City is in need of substantial physical improvement, and in recent years the Town has received numerous service complaints from its customers. Having concluded that it was not feasible for the Town to provide necessary funds for the repair and improvement of the Town's electric distribution system, officials of the Town communicated with representatives of Applicant early in the year 1966 and inquired whether or not Applicant would be interested in acquiring the municipal electric distribution system. Because of the inadequacy of the Town's records, it was agreed that the Town should obtain from independent engineers and accountants an appraisal and an audit of the Town's system. Such appraisal and audit were made, and negotiations between officials of the Town and representatives of Applicant ensued. On July 14, 1966, Applicant presented at a regular meeting of the Town's governing body a formal offer to purchase the Town's electric distribution system for the sum of $150,000.00. Officials of the Town indicated that the Town would not be interested in that proposal, so at the same meeting, Applicant's representatives presented a formal proposal to lease the Town's electric distribution system for a term of twenty years at an annual rental of $18,000.00 to be paid by Applicant. This latter proposal was not acted upon at the time but was taken under consideration by officials of the Town. Representatives of the Company made numerous appearances before the Town's governing body during extended negotiations which continued until August, 1967, when the Board of Commissioners of the Town voted to recommend to its citizens the proposed lease of the Town's electric distribution facilities to Applicant for a term of 20 years at an annual rental payment of $18,000.00. On October 24, 1967, the Board of Commissioners adopted a resolution for submission of the proposed lease to a vote at a special election to be held in the Town of Elm City on December 12, 1967. Such special election was duly held, and the qualified voters of the Town of Elm City approved the proposed lease to Applicant of the Town's electric distribution system, 287 votes having been cast in favor of the proposition and 12 votes having been cast against it. Pursuant to such approval by the qualified voters of the Town, the Board of Commissioners of the Town of Elm City and Applicant entered into a lease agreement dated December 28, 1967, copy of which is attached to and made a part of the application in this proceeding as Exhibit 1.

4. The electric rates of the Town of Elm City generally are higher than those of the Company. On the basis of their use of electricity in the year 1966 it is estimated that customers of the Town would pay about $13,000.00 less for electricity annually if Applicant's rates were effective.

5. Applicant proposes, after the lease agreement becomes effective, to construct a 110 KV substation adjacent to the corporate limits of the Town and a feeder line extending from the substation to connect with and serve the Town's electric distribution system. It proposes further to repair and improve such system, so that ultimately it will conform to Applicant's standards; but such improvement will extend over a period of several years. While it will be necessary for Applicant to replace a substantial part of the present facilities of the Town's system in making the proposed improvement thereof, it is estimated that more than 15% of the Town's present electric distribution facilities will remain in service at the end of the 20-year lease period. When Applicant commences operation of the Town's electric distribution system, the customers will be served therefrom at the rates and subject to the rules and regulations of Applicant as approved by the Commission. There is potential industrial growth for the Town and the use of electricity in the Town is expected to increase as a consequence of the lower rates and improved service proposed by Applicant.

6. Applicant has a long and successful operating experience in the generation, transmission, and distribution of electricity, with highly qualified personnel and adequate facilities, and it will be able to provide an acceptable and improved quality of electric service for the customers served from the Town's electric distribution system.

7. Applicant proposes to handle the accounting for this transaction by charging annually to Account No. 589-Rents, as an operating expense, the entire annual payment to be made under its lease with the Town of Elm City, and by charging to appropriate operating expense accounts the other expenses incurred in the operation and maintenance of the Town's electric distribution system.

Upon the foregoing findings of fact, the Commission makes the following

CONCLUSIONS OF LAW

First. That public convenience and necessity require and will be best served by Applicant's acquisition by lease and operation of the electric distribution system owned by the Town of Elm City, pursuant to a lease agreement between Applicant and the Town dated December 28, 1967, copy of which is attached to and made a part of the application herein as Exhibit 1, in order that the customers served therefrom may receive better electric service at less cost; and that a certificate of public convenience and necessity should be issued to Carolina Power & Light Company, Applicant, authorizing such acquisition and operation by Applicant of the Town's electric distribution system.

Second. That the aforesaid lease agreement between Applicant and the Town resulted from arm's-length negotiations which extended over a period of approximately

18 months. It was entered into by the parties in good faith and in fact provides for a bona fide lease of the Town's electric distribution system to Applicant for a 20-year term.

IT IS THEREFORE ORDERED as follows:

1. That Carolina Power & Light Company, Applicant, be and it hereby is authorized to lease and operate the electric distribution system owned by the Town of Elm City, North Carolina, pursuant to the provisions of the lease agreement between the parties dated December 28, 1967, copy of which is attached to the application in this proceeding as Exhibit 1;

2. That Carolina Power & Light Company, Applicant, is authorized to interconnect the facilities of said electric distribution system with its system, and to construct the additional facilities necessary to adequately effect such interconnection; and that Applicant is further authorized to establish for the customers served and to be served from said electric distribution system those schedules of rates and riders, and the conditions of service, which have been authorized and are in effect for the other customers of Applicant;

3. That Applicant is authorized and directed to account for this transaction by charging annually to Account No. 589-Rents, as an operating expense, the entire annual payment to be made under the above-mentioned lease agreement between Applicant and the Town of Elm City, and by charging to appropriate operating expense accounts the other expenses incurred by it in the operation and maintenance of the Town's electric distribution system;

4. That this order shall constitute a certificate of public convenience and necessity for Applicant's lease and operation of the electric distribution system of the Town of Elm City as herein provided; and

5. That this proceeding shall be continued on the docket of the Commission for the purpose of receiving from Applicant a report of the interconnection of the facilities of the Town's electric distribution system with Applicant's system, and of the commencement of Applicant's operation of the Town's electric distribution system, as herein authorized.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. E-32, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Davenport Power & Light Company) ORDER
Adequacy and Sufficiency of its Services)

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Friday, October 4, 1968, at 10:00 A.M.

BEFORE: Chairman Harry T. Westcott (Presiding), Commissioners Thomas R. Eller, Jr., John W. McDevitt, Clawson L. Williams, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Respondent:

Martin L. Cromartie, Jr.
Attorney at Law
118 East St. James Street
Tarboro, North Carolina 27886

For the Intervenor:

George A. Goodwyn
Assistant Attorney General
Old Library Building
Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Commission Staff:

Edward B. Hipp
Commission Counsel
P. O. Box 991, Raleigh, North Carolina 27602

Larry G. Ford
Associate General Counsel
P. O. Box 991, Raleigh, North Carolina 27602

ELLER, COMMISSIONER: These proceedings arise following filing of a petition on July 5, 1968. The Petition was signed by some 78 customers of Davenport Power & Light Company (Davenport) and alleged that Davenport failed, after repeated requests, to furnish sufficient voltage to operate electric motors, freezer lockers, televisions, air conditioners, fans, electric lights, and tobacco curers and expressed "great need for better and essential voltage".

Extended informal negotiations between Davenport and the Commission and its staff prior to the petition having been unproductive, the Commission on August 2, 1968, issued an Order of Investigation and Show Cause directing, inter alia,

that Davenport show cause why, if its service be found inadequate and insufficient, the Commission should not enter an order requiring Respondent to make such additions, extensions, repairs or improvements "as the Commission may find necessary within a reasonable time to be set by the Commission, or, in the alternative, Respondent shall be required to show cause why its Certificate of Public Convenience and Necessity should not be revoked and cancelled."

Upon institution of the proceedings the Attorney General of the State intervened for and on behalf of the using and consuming public pursuant to G.S. 62-20.

Formal hearings were held on October 4, 1968, with the captioned parties and counsel present and presenting evidence.

The Attorney General contends, in effect, that the service being rendered by Davenport is grossly inadequate and inferior and that Respondent (Davenport) is either unable or unwilling to render service which is good, adequate, and sufficient. The Attorney General, thereupon moved that: (1) The Commission cause Respondent to make such additions, repairs and improvements under such time schedule as the Commission may find necessary and appropriate to bring the System up to appropriate standards; or (2) Cause the System to be leased; or (3) Cause the System to be sold; or (4) Cause the Company or System to be disenfranchised pursuant to Paragraph 2 of the Commission's Order to Show Cause. The Attorney General's motion was taken under consideration for later ruling.

Davenport contends that its service is the best that can be provided under the circumstances, that the power shortages, if any, experienced by its customers are due to insufficiencies in its own source of supply over which Davenport has no control, and that the increasing consumer appliance demand, the increasing current used for tobacco curing, and the "increasing needs caused by the heat wave", when coupled with its own insufficient supply made it impossible to provide customers with as much current as they wanted. Davenport further contends that it can and will obtain a new source of power supply and that it can and will bring its System up to the standards demanded by the customers and recommended by the staff.

The Commission's Staff took no particular position, but presented testimony describing the Davenport System and gave opinions as to the source of Davenport's problems and the type of system needed for an adequate, sufficient, and continuous supply of electric energy to Davenport's customers.

Upon the competent, material, and substantial evidence adduced, we make the following

FINDINGS OF FACT

1. Davenport Power & Light Company is a proprietorship owned and operated by William Davenport, of Tarboro, North Carolina. On January 15, 1938, the North Carolina Utilities Commission granted Davenport a Certificate of Public Convenience and Necessity (N.C.U.C. Docket No. 1061). At the time the certificate was granted, Davenport owned and operated 25 miles of electric power lines, 16 miles being in No. 9 Township of Edgecombe County, out from the Town of Macclesfield in the Webb Lake Section, five (5) miles being in No. 10 Township of Edgecombe running out from the Town of Pinetops to St. Lewis along State Highway No. 42, and four (4) miles being in No. 8 and No. 10 Townships running out from Pinetops to Old Sparta. At the time the certificate was issued, Davenport had utility plant valued at about $10,000 and distributed electricity for compensation to 92 customers in the aforesaid areas.

2. Davenport has held out to serve the public for compensation continuously since the aforesaid certificate was granted. As a result of gradual line extensions and customer additions over the years, Davenport at the time of hearing had approximately 110 miles of power line centered around the areas already mentioned and the additional communities of Holdens Cross Roads, Sharp Point, Handy Corner, the area between Pinetops and Macclesfield, and the area along State Road 1109 between Macclesfield and Fountain. Davenport now has a net book investment in utility plant of approximately $80,211.00 and serves about 619 residential customers and commercial customers at rates and charges contained in tariffs posted with the Commission. Davenport does not serve any industrial customers; nor does it sell power at wholesale. Respondent does not generate electricity; nor does it operate transmission lines as such. It purchases the power it distributes from the Town of Macclesfield, which purchases its power from the City of Wilson, which purchases its power from Carolina Power & Light Company. Davenport's posted rates and charges are the second highest in the State and result in charges as high as $164.33 per month for general stores and as high as $53.50 for residential customers having appliances such as deep freezes, air conditioning, etc.

3. No territory has been assigned to Davenport pursuant to G.S. 62-110.2. In addition to Davenport's lines, the following towns, cooperatives, or power companies also have lines in the same general area or proximate thereto: Pitt and Greene EMC, Edgecombe-Martin EMC, Crisp Power Company, Virginia Electric and Power Company, Carolina Power & Light Company, City of Wilson, Town of Pinetops, Town of Macclesfield, and Town of Fountain.

4. Davenport's annual report filed with the Commission for the year 1967 shows gross revenues of $74,451.00, operating revenue deductions of $75,574.00 (of which

$39,557.00 was for purchased electricity), and a net loss of $1,123.00. The estimated net worth of Mr. Davenport's electric power distribution operations computed as of the date of said report is $84,874.00.

5. Respondent utilizes the services of five (5) persons in its electric utility operations as follows: Mrs. Davenport, wife of William Davenport, who reads meters, renders bills and receives and relays messages to her husband; one (1) lineman who does new construction and maintenance work on lines; two (2) part-time linecrew helpers who assist the lineman in this work. Mr. Davenport personally manages the over-all utility operation, supervises and assists with virtually all construction and maintenance and repair, and attends to complaints. Respondent has two (2) pole line trucks, one (1) bucket truck, one (1) aerial ladder truck not presently in use, and one (1) pick-up truck. Mr. Davenport does not maintain an office or residence in the area he serves, but maintains an un-attended warehouse and storage yard at Pinetops.

6. The Davenport System is basically a 2400 volt, 3-phase delta system divided intc two parts. Each part of the System begins at the corporate limits of the Town of Macclesfield, one at the north side and the other at the south side. Power is received at 3-phase 2400 volts at both points. One 3-phase line runs north from Macclesfield to the eastern outskirts of Pinetops and thence along N. C. 42 to Old Sparta. A 3-phase tap is made from this line south of Pinetops and extends around the town and along N. C. 42 west to St. Lewis. The total 3-phase line distance north of Macclesfield is about 15 miles. The second 3-phase line, beginning on the south side of Macclesfield, runs west along State Road 1004 approximately three miles and east toward Crisp about one mile. The total 3-phase system is about 19 miles. The remainder of the system, consisting of about 90 miles, is single phase. The largest sizes wire in the system are No. 2 aluminum and No. 4 copper which are equivalent in current carrying capacity. The major portion of the single phase lines is No. 6 copper.

7. Davenport does not keep its books and records in accordance with the Uniform System of Accounts for Class D Electric Utilities as adopted by this Commission and applicable to Davenport.

8. For many years Davenport customers have experienced deficiencies in their power supply from Davenport and delays in satisfying complaints. Specifically, the conditions experienced are, in part: dimming of electric lights to a yellow glow, insufficient power to operate individual residential deep freezes, fans, air conditioners, water pumps, television sets, electric stoves and irons, and tobacco curers. These electric power deficiencies have resulted in burned-out and damaged motors, televisions, and appliances. Some families have found it necessary to schedule their bathing, their washing and ironing, and their

television operation at times when power is sufficient to operate necessary appliances without damage. Some remove all appliance plugs when leaving the home for any period of time in order to prevent damage to motors and appliances. One storekeeper testified that it was necessary for him to maintain a night vigil over his motors, alternately plugging and unplugging motors to preserve perishables and protect motors from overheating.

9. The conditions found to exist in Finding No. 8 are due to fluctuations in voltage on the Davenport System, but are primarily due to low voltage. While these service problems are affected to a minor extent by fluctuations in Davenport's source of supply, they are primarily due to the overloading of the 2400 volt delta Davenport System and to the large extent of single phase lines. The customer load requires at least a 12.5 KV system and a much greater proportion of 3-phase facilities.

10. Davenport is totally unable with present personnel, procedures, equipment, and facilities to render adequate and sufficient electric utility service to existing customers and is unable to meet the needs of additional customers.

11. Customers of Davenport do not obtain prompt handling and remedy of their service complaints. In some instances, customers telephone their complaints to Mrs. Davenport in Tarboro during the day. Mrs. Davenport has no way to contact Mr. Davenport since he is usually out on the truck and the truck has no communications with Mrs. Davenport. In some instances, customers are instructed to leave notes on doors such as the Davenport Warehouse door in Pinetops. Material customer inconvenience and delay occurs from the time notes are placed until the problem is known and attended. In telephoning service complaints, it is necessary for many customers to use long distance; Davenport will not accept the charges for these calls. Davenport has no procedure for restoration of service in emergencies such as storms and, as a result, the customers experience outages of abnormal duration in such events. Within the past year it was necessary for Commission personnel, on customer complaint, to locate a contract crew and contact Davenport about it in order to get service restored following snow and ice storms.

12. For many years the Commission's Staff has had discussions with Davenport, first in an effort to have him raise his system from a 2400 volt delta system to a 4160 volts wye system and then (when in the opinion of the Commission's Staff Engineers the system would be overloaded even on a 4160 volt wye system) to a 12.5 KW system. All such discussions and contacts have been unproductive with the result that Davenport retains the 2400 volt delta system and the large portion of single phase lines herein above found.

13. In June, 1967, the full Commission held conference with Davenport concerning his source of supply and rates. On September 8, 1967, the Commission caused a letter to be written Davenport stating: "...it is agreed that you should submit us a layout of your system in helping us plan and you to plan how to use it (a new source of supply) and we will appreciate your advising what progress you have made in this direction." This letter was not answered by Davenport. Another letter was caused to be sent by the Commission on September 20, 1967, to the same effect. Later, the Commission caused a letter to be sent Davenport establishing a thirty (30) day deadline for filing the report requested. The layout and plans were never furnished by Davenport and were not furnished at the time of hearing.

14. There was received in evidence in these proceedings an "Application for Supply of Electricity" dated September 6, 1968, made by Davenport to Carolina Power & Light Company and accepted by the Company. Under this agreement, Carolina Power & Light Company agrees to supply power to Davenport at 12.5 KV about four (4) miles southwest of Macclesfield, with Carolina Power & Light Company furnishing the transformers for Davenport's connection theretc. The Davenport System is not of sufficient voltage to receive and use the source which Carolina Power & Light Company has agreed to provide. An investment by Davenport of approximately $35,000 would be required to receive and make use of the voltage offered. Davenport is under no obligation to Carolina Power & Light Company to take power from this source at any particular time, although Carolina Power & Light Company agrees to make it available by January 1, 1969. The power supplied from this source would result in charges for power about 28% less than what it now pays to the Town of Macclesfield. Davenport has no specific or formal plans for upgrading its system to 12.5 KV although it has made minor installations indicating intentions to upgrade the system to that level. Mr. Davneport is of the opinion that the system can be brought up gradually rather than to begin taking power at full 12.5 KV "all at once." He believes that he can in this way bring his system up to the point that by March, 1969, it will take the load Carolina Power & Light Company agrees to provide.

15. Many Davenport customers are closely proximate to the lines of other suppliers. An indefinite number have sought Davenport's release so that they may take power from those proximate sources which they consider adequate. Davenport refused to release any of these customers to other suppliers.

16. The Davenport System voltage level is repeatedly below the minimum prescribed by Commission Rule R8-17 as applicable to Davenport Power & Light Company.

17. Davenport is willing voluntarily to sell his facilities, and transfer his real property and property rights, or to lease his electric system for operation. He

has for some time negotiated, and is now negotiating, for such sale or lease to other suppliers. He has not sold or leased due to inability to agree on the amount and type of consideration to be made by prospective vendees or lessees. Davenport is not presently willing to submit the amount and type of consideration for valuation for pricing purposes by the Commission, but would be agreeable to an arbitration procedure whereby he selected one arbiter, the vendee or lessee selected one arbiter, and the two selected arbiters chose a third arbiter for valuation and fixing the consideration involved.

CONCLUSIONS

1. The service of Davenport Power & Light Company is inadequate and insufficient.

2. Additions, extensions, repairs, improvements, and changes in Davenport Power & Light Company's existing plant, equipment, apparatus facilities, and other physical property as detailed in Appendix "A" hereto attached are necessary for the security, convenience, needs, and safety of the Company's patrons, employees, and the public and in order to secure reasonably adequate service and facilities and reasonably and adequately to serve the public convenience and necessity.

3. Davenport Power & Light Company has been afforded reasonable notice and a reasonable time in which to remedy the major inadequacy in its service, i.e., to increase the voltage capacity on its system so that its customers may consistently receive adequate and sufficient power to serve their appliances and small motors. Despite the time afforded, Davenport has failed to remedy this major inadequacy.

4. There is insufficient evidence to justify a conclusion that Respondent is, financially or otherwise, fit, ready, willing and able to render good, adequate, and sufficient electric service to its customers, present and prospective.

5. The position of Respondent, and the testimony of its owner, Mr. William Davenport, for all practical purposes admits, and we conclude, that: (a) the complaints of customers are justified; (b) the sale or lease of Davenport's facilities at a fair price to, and the operation of said facilities by, an electric supplier which is fit, ready, willing, and able to improve and operate them in providing reasonable and adequate service in the area is desirable and in the best interests of both Mr. Davenport and his customers, is preferable to any other alternative, and should be expedited; (c) the only obstacle to such sale or lease, i.e., the nature and amount of consideration, appears susceptible to arbitration in accordance with the procedure agreed to by Mr. Davenport, i.e., with each party choosing an arbiter and the two arbiters so chosen to choose

a third; (d) in the absence of voluntary submittal to arbitration of the sale or rental price by the Commission (which Mr. Davenport does not agree to at this time) the Commission is without jurisdiction to value Davenport's properties and facilities for sale or rental purposes and fix the consideration therefor.

6. That Davenport's Certificate of Public Convenience and Necessity is subject to cancellation by the Commission; but is not subject to sale or lease, although the Commission has jurisdiction to approve or disapprove the sale or lease of Davenport's facilities.

7. That, in view of the inadequacy and undependability of its power supply to existing customers as herein found to exist, Davenport Power & Light Company's statutory service rights within 300 feet of its existing lines as defined by G.S. 62-110.2(b), Sections 1, 2, & 4, are subject to the jurisdiction and order of this Commission pursuant to G.S. 62-110.2(d)(2) directing other proximate suppliers to serve customers served or to be served by Davenport and within 300 feet of its lines.

Upon the foregoing findings and conclusions, IT IS ORDERED:

1. That Davenport Power & Light Company and William Davenport, individually as proprietor and owner thereof, be and hereby is directed to submit to the Commisson in writing not later than 5:00 P.M., January 2, 1969, a factual and detailed report showing good faith negotiations with a bona fide vendee or lessee for its electric distribution plant and facilities. This report shall contain the terms of said sale or lease, if then agreed to by the parties. If no terms of sale or lease have been agreed to at the time of said report, then said report shall disclose in detail all efforts made to negotiate the same, the parties with whom negotiations were had, and a description of concrete steps taken to arbitrate such terms of sale or lease, it being provided that in the absence of such agreement on terms, the report shall show why the method of arbitration agreed to by William Davenport in these proceedings and discussed in the premises, or some other method of arbitration acceptable to the parties, was not used.

2. That Davenport Power & Light Company, or its agreed vendee or lessee, shall not later than 5:00 P.M. on January 2, 1969, file with the Commission a further and separate written report disclosing comprehensive, complete, and specific engineering plans, drawings, and programs for all additions, repairs, construction, and improvements necessary to meet all conditions specified in Appendix "A" attached hereto and incorporated and for the completion of all such matters and full operation thereunder not later than March 1, 1969. Such plans and specifications herein required to be reported upon shall include a full, complete, and accurate financial statement and balance sheet showing

financial ability to accomplish all matters and things required by March 1, 1969, and the source of capital therefor; provided, however, that, in the event a binding written contract for sale or lease of his facilities to a bona fide purchaser has been entered prior to the date for filing the report as provided in Ordering Clause No. 1, it shall not be required that William Davenport file the report and financial statement and balance sheet required by this paragraph (No. 2).

3. That William Davenport shall hereby take notice that failure to comply with the provisions of this Order as hereinabove set forth shall be made the basis for proceedings for any or all of the following: (a) Proceedings as in punishment for contempt as provided by G.S. 62-61; (b) The entry of an order cancelling the Certificate of Public Convenience and Necessity heretofore issued by the Commission to and now held by Davenport Power & Light Company; (c) The entry of an order by the Commission directing other acceptable supplier or suppliers to serve any or all persons within Davenport's service area desiring service from said other supplier or suppliers pursuant to G.S. 62-110.2(d) (2).

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

APPENDIX "A"

REQUIRED ADDITIONS, EXTENSIONS, REPAIRS, IMPROVEMENTS, AND CHANGES IN DAVENPORT POWER & LIGHT COMPANY'S FACILITIES AND OPERATIONS TO BE MADE BY MARCH 1, 1969

1. Conversion to Larger System. All existing facilities shall be upgraded to, and thereafter maintained at, a 12.5 KV 3-phase system with single-phase tap lines used only where approved in writing in advance by the Commission.

2. Service from New Contract Source. Source of supply shall be pursuant to existing contract received in Evidence in these proceedings as Respondent's Exhibit "A", or its equivalent, but not less than at 12.5 KV.

3. Design Requirements. Both the distribution system and the Source of Supply as provided for in Nos. "1" and "2" hereof shall be designed by a competent, experienced, professional engineer licensed by the State of North Carolina, which design and layout shall be reduced to writing and submitted in advance to the Commission for approval.

4. Rights of Way Maintenance. A program of systematic Right of Way Trimming for all new and all rebuilt facilities shall be instituted and maintained so as to establish and keep line clearance of at least five (5) feet from danger timber, foliage, or other physical objects.

5. Business Office and Records. A business office shall be established in the area served. This office shall be maintained by full-time, competent personnel on an eight (8) hour, five (5) day work week basis. A 24 hour answering service shall be established and maintained for immediate attention to emergency service. The office personnel shall keep all business books and records in said office. Books shall be established and kept in accordance with the Uniform System of Accounts as adopted by the Commission for Electric Utilities, including the establishment and keeping of continuing property records. Special reverse charge toll telephone service shall be established and maintained for receipt of customer compliants, outage reports, and other customer emergencies. Standard meter-reading and billing procedures shall be established and maintained.

6. Outage Records and Reports. A current and accurate record of all reported power outages shall be kept and available for Utilities Commission inspection. This record shall show for each outage the time of outage, time of service restoration, and cause of outage. A copy of this record shall be filed with the Commission at the end of each quarter following March 1, 1969.

7. Voltage Recordings. Twenty-four (24) hour voltage level recordings on the extremities of the major routes of the system shall be made monthly and a copy thereof submitted to the Commission not later than the 15th day of the month following the month for which the recordings were taken.

8. Additional permanent full-time maintenance personnel shall be utilized so as to assure continuous, adequate, and prompt maintenance and repair. A detailed listing of all personnel employed shall be filed monthly beginning March 1, 1969. This listing shall show the names of personnel, their experience and qualifications, their job assignments and responsibilities, and the number of hours each worked during the period reported.

9. Emergency Plans and Procedures. There shall be established, filed with the Commission for approval, and thereafter observed, a plan for emergency procedures and actions for service restoration in major emergencies such as ice storms, hurricanes,

etc. Such plan shall disclose the identity of cooperating electric suppliers and of available emergency crews contracted for in advance of such events, a priority basis for restoration of service, and the procedure for reporting emergencies and accidents to the Commission.

10. Inter-Communications. There shall be established such mobile radio communications equipment in the office and vehicles serving the areas so that there is continuous contact between each vehicle and between the vehicles and the office and warehouse for expeditious dispatch of all messages affecting electric service through said facilities.

DOCKET NO. G-21, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Filing by North Carolina Natural Gas Corporation of a report entitled "Annual Depreciation Accrual Study as of September 30, 1967"	) ORDER APPROVING DEPRECIATION RATES

The Commission, pursuant to G.S. 62-35(c) established Rule R6-80, "Requirements for Depreciation Study" in which it directed that all natural gas utilities not having filed depreciation rates for approval with this Commission shall make depreciation studies and file a schedule of depreciation rates for approval in 1967. Pursuant to that rule, North Carolina Natural Gas Corporation on June 25, 1968, filed with this Commission a report entitled "North Carolina Natural Gas Corporation Annual Depreciation Accrual Study as of September 30, 1967" and requests that the rates determined by this report as shown on Table B, Page 16, Column 10 entitled "Annual Depreciation Requirement (Percent)" should be approved and authorized pursuant to its Rule R6-80.

After full consideration of the detailed report as filed by North Carolina Natural Gas Corporation, the Commission is of the opinion that the rates set forth on Table B, Page 16, Column 10 entitled "Annual Depreciation Requirement (Percent)" should be approved and authorized pursuant to its Rule R6-80.

IT IS, THEREFORE, ORDERED, That the depreciation rates set forth on Table B, Page 16, Column 10 entitled "Annual Depreciation Requirement (Percent)" as contained in the study entitled "North Carolina Natural Gas Corporation Annual Depreciation Accrual Study as of September 30, 1967" as prepared by Drazen Associates, Inc., Consulting Engineers, be and is hereby approved and authorized for use pursuant to Rule R6-80.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-21, SUB 53

BIGGS, COMMISSIONER, DISSENTING: I consider that the matter of approving depreciation rates is sufficiently important to warrant a formal hearing at which the Commission, its Staff and other interested persons can make full inquiry into the reasonableness of the depreciation rates sought to be approved. There was no such hearing in

this matter, and I, therefore, dissent to the entry of an order giving approval to the depreciation rates submitted by North Carolina Natural Gas Corporation.

M. Alexander Biggs, Jr., Commissioner

DOCKET NO. G-3, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Filing by North Carolina Gas Service,	) ORDER
Division of Pennsylvania & Southern Gas	) APPROVING
Company, of a report entitled "North Carolina	) DEPRECIATION
Gas Service Report Annual Depreciation	) RATES
Accrual Study as of September 30, 1967"	)

The Commission pursuant to G.S. 62-35(c) established Rule R6-80, "Requirements for Depreciation Study" in which it directed that all natural gas utilities not having filed depreciation rates for approval with this Commission shall make depreciation studies and file a schedule of depreciation rates for approval by the Commission in 1967. North Carolina Gas Service requested an extension in which to make this filing which was granted. Pursuant to that rule, North Carolina Gas Service on March 26, 1968, filed with this Commission a report entitled "North Carolina Gas Service Report Annual Depreciation Accrual Study as of September 30, 1967", and requests that the rates determined by this report as shown on Table B, Page 14, Column 10 entitled "Annual Depreciation Requirement (%)" be approved.

After full consideration of the detailed report as filed by North Carolina Gas Service, the Commission is of the opinion that the rates set forth on Table B, Page 14, Column 10 entitled "Annual Depreciation Requirement (%)" should be approved and authorized for use by North Carolina Gas Service pursuant to Rule R6-80.

IT IS, THEREFORE, ORDERED, That the depreciation rates set forth on Table B, Page 14, Column 10 entitled "Annual Depreciation Requirement (%)" as contained in the study entitled "North Carolina Gas Service Report Annual Depreciation Accrual Study as of September 30, 1967," be and are hereby approved and authorized for use by North Carolina Gas Service pursuant to Rule R6-80.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-1, SUB 27

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Filing by United Cities Gas Company of	) ORDER
a report entitled "Annual Depreciation	) APPROVING
Accrual Study as of December 31, 1967 -	) DEPRECIATION
North Carolina Division"	) RATES

The Commission, pursuant to G.S. 62-35(c) established Rule R6-80, "Requirements for Depreciation Study" in which it directed that all natural gas utilities not having filed depreciation rates for approval with this Commission shall make depreciation studies and file a schedule of depreciation rates for approval in 1967. Pursuant to that rule, United Cities Gas Company on July 1, 1968, filed with this Commission a report entitled "United Cities Gas Company, Annual Depreciation Accrual Study as of December 31, 1967 - North Carolina Division" and requests that the rates determined by this report as shown on Table B, Page 19, Column 10, entitled "Annual Depreciation Requirement (Percent)" should be approved and authorized pursuant to its Rule R6-80.

After full consideration of the detailed report as filed by United Cities Gas Company, the Commission is of the opinion that the rates set forth on Table B, Page 19, Column 10, entitled "Annual Depreciation Requirement (Percent)" should be approved and authorized pursuant to its Rule R6-80.

IT IS, THEREFORE, ORDERED That the depreciation rates set forth on Table B, Page 19, Column 10, entitled "Annual Depreciation Requirement (Percent)" as contained in the study entitled "United Cities Gas Company Annual Depreciation Accrual Study as of December 31, 1967 - North Carolina Division" as prepared by Drazen Associates, Inc., Consulting Engineers, be and is hereby approved and authorized for use pursuant to Rule R6-80.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Piedmont Natural Gas Company, Inc., and Carolina Natural Gas Corporation to merge Carolina Natural Gas Corporation into Piedmont Natural Gas Company, Inc., and for authority to issue securities pursuant to the terms of such merger	ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on June 11, 1968, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Applicant:

Kenneth M. Brim, and
Jerry W. Amos
McLendon, Brim, Brooks, Pierce & Daniels
Post Office Drawer U
Greensboro, North Carolina 27402

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
Post Office Box 991
Raleigh, North Carolina

No Protestants

ELLER, COMMISSIONER: This is a joint application by Piedmont Natural Gas Company, Inc., and Carolina Natural Gas Corporation for approval of the terms of a merger agreement providing, inter alia:

Carolina Natural Gas Corporation to be merged into Piedmont Natural Gas Company, Inc., the certificate of convenience and necessity heretofore issued to Piedmont Natural Gas Company, Inc., to be amended; Piedmont Natural Gas Company, Inc., to issue certain Preferred Stock, First Mortgage Bonds, and Debentures; Piedmont Natural Gas Company, Inc., to incur estimated expenses in the approximate amount of $50,000 in connection with the merger, the issuance of preferred stock, bonds, and debentures; and Piedmont Natural Gas Company, Inc., to operate the Carolina Natural Gas Corporation properties in the area now certificated to Carolina Natural Gas

Corporation and in the communities in which Carolina Natural Gas Corporation holds franchises as a separate division, with the rates for service in such area being the rates heretofore filed by and approval for Carolina Natural Gas Corporation as just and reasonable until such time as Piedmont Natural Gas Company, Inc., is granted a general rate revision, all as set out in the petition.

Having set and held hearings after notice as captioned, and having reviewed the material, competent evidence of record, we make the following

FINDINGS OF FACT

1. Piedmont Natural Gas Company, Inc. (Piedmont), is a corporation organized and existing under the laws of the State of New York; is duly domesticated in the State of North Carolina; maintains its principal office at 4301 Yancey Road, Charlotte, North Carolina; is engaged in the business of distributing natural gas to the public in its franchised areas in the States of North Carolina and South Carolina; is a public utility as defined in Article 1 of Chapter 62, General Statutes (G.S. 62-1 - G.S. 62-4) of North Carolina; and in its operations in this State is subject to the jurisdiction of the North Carolina Utilities Commission.

2. Carolina Natural Gas Corporation (Carolina), is a corporation organized and existing under the laws of the State of Delaware; is duly domesticated in the State of North Carolina; maintains its principal office in the City of Hickory, North Carolina; is engaged in the business of distributing natural gas in its franchised areas of North Carolina; is a public utility as defined in Article 1 of Chapter 62, General Statutes (G.S. 62-1 - G.S. 62-4) of North Carolina; and is subject to the jurisdiction of the North Carolina Utilities Commission.

3. The directors and stockholders of Piedmont and Carolina have approved the merger of the properties, powers, franchises, and privileges of Carolina into and with those of Piedmont, which is proposed as the surviving corporation.

4. Piedmont is to issue 51,000 shares of new class of $6.00 Cumulative Convertible Second Preferred Stock (without par value, $25.00 stated value and $100.00 liquidating value), 50,807 shares of which are to be issued for conversion of Carolina's common capital stock. Piedmont is also to issue in connection with said merger the following First Mortgage Bonds and Debentures for Carolina's outstanding First Mortgage Bonds and Debentures:

First Mortgage 6% Bonds, 1968 Series due 1985	$ 430,000
First Mortgage 5-1/2% Bonds, 1968 Series due 1987	457,000
First Mortgage 5-1/8% Bonds, 1968 Series due 1988	750,000
First Mortgage 5-7/8% Bonds, 1968 Series due 1991	600,000
5-1/2% Debentures due May, 1968	1,400,000

5. The expenses to be incurred in connection with the merger, the issuance and exchange of the $6.00 Preferred Stock and the issuance and exchange of the First Mortgage Bonds and Debentures are estimated at $50,000, which expenses are to be paid by Piedmont as the surviving corporation.

6. The consummation of the merger and the issuance and exchange of the $6.00 Preferred Stock and the issuance and exchange of the First Mortgage Bonds and Debentures is contingent upon Carolina receiving a ruling from the Internal Revenue Service to the effect that (1) the merger will be a tax-free reorganization under Section 368(a)(1)(A) of the Internal Revenue Code of 1954; and (2) the provisions of Section 306(a) of said Code will not apply to the shares of Piedmont's Second Preferred Stock to be received in the merger by stockholders of Carolina.

7. Following the proposed merger the surviving company's capitalization will be 62.8% long-term debt, 13.3% preferred stock, and 23.9% common equity.

8. The pro forma balance sheet for the surviving company is as follows:

ASSETS

Utility plant, less accumulated depreciation and amortization		$74,139,981
Other physical property and investments - net		438,730
Current assets		11,253,510
Deferred charges		1,229,832
Total Assets and Other Debts		$87,062,053

LIABILITIES

Capitalization		
Preferred stock	$ 9,753,475	
Common stock and retained earnings	17,535,224	
		$27,288,699
Long-term debt (less current portion)		45,999,502
Current liabilities		12,214,310
Deferred credits		1,058,447
Accumulated deferred income taxes		146,488
Contributions in aid of construction		354,607
Total Liabilities and Other Credits		$87,062,053

9. All municipal franchises now held by Carolina are either transferable or the appropriate municipality has agreed to grant the same franchise rights to the surviving corporation.

10. The merger will permit a more efficient use of off-peak gas by the surviving company than now exists for the two corporations separately and will likewise result in an improved load factor which will enable the surviving company to contract for its gas supply on a more favorable basis than previously. A new connection with the interstate supplier now being furnished Carolina will tend to increase the stability and pressure of gas supply to Piedmont's existing customers.

11. The proposed merger between Piedmont and Carolina may reasonably be expected to improve the surviving corporation's ability to attract capital and will, especially as to those properties and areas now served by Carolina, tend to result in a somewhat lower comparative cost of capital than would have been experienced by the companies separately.

12. The proposed merger will permit operating economies for the surviving corporation not previously available to the separate companies, e.g., expensive technical equipment heretofore owned by, but not fully utilized by, Piedmont can now be fully utilized for the benefit of the Carolina properties, which does not own such equipment; certain management, investment, and accounting services and expenses can be consolidated and thereby reduced.

13. The proposed merger, with the benefits and economies it permits will tend to stabilize consumer rates at present levels and will not, of itself, result in increased consumer rates overall.

CONCLUSIONS

The merger of Carolina Natural Gas Corporation into Piedmont Natural Gas Company, Inc., herein proposed is:

(1) For a lawful object within the corporate purposes of the Petitioner;

(2) Compatible with the public interest;

(3) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service;

(4) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED that:

1. Piedmont Natural Gas Company, Inc., and Carolina Natural Gas Corporation be, and they are hereby, authorized to consummate the merger under the terms and conditions proposed in the Plan of Merger, attached to the application in this proceeding as Exhibit D. The surviving corporation shall be known as Piedmont Natural Gas Company, Inc.

2. Piedmont be authorized to issue 51,000 shares of a new class of $6.00 Cumulative Convertible Second Preferred Stock (without par value, $25.00 stated value, $100.00 liquidating value), 50,807 shares of which are to be issued in connection with the merger for the conversion of Carolina common stock.

3. Piedmont be authorized to issue in connection with the merger the following First Mortgage Bonds and Debentures:

First Mortgage 6% Bonds, 1968 Series due 1985	$ 430,000
First Mortgage 5-1/2% Bonds, 1968 Series due 1987	457,000
First Mortgage 5-1/8% Bonds 1968 Series due 1988	750,000
First Mortgage 5-7/8% Bonds, 1968 Series due 1991	600,000
5-1/2% Debentures, due May, 1968	1,400,000

4. Piedmont be authorized to execute and deliver to Morgan Guaranty Trust Company of New York, as Trustee, a Twelfth Supplemental Indenture, under which the First Mortgage Bonds will be issued; and to execute and deliver to First National City Bank, as Trustee, a Second Supplemental Indenture, under which the Debentures will be issued.

5. Piedmont be authorized to incur estimated expenses in the approximate amount of $50,000 in connection with the merger of Carolina into Piedmont, authorized to issue a new class of preferred stock and to issue additional bonds and debentures.

6. The certificate of convenience and necessity heretofore granted Carolina be, and the same is hereby, cancelled, declared null and void and of no further force and effect as of the legal date of the merger.

7. The certificate of convenience and necessity heretofore granted Piedmont by this Commission is hereby modified and amended by including therein all rights, privileges, powers, immunities, and permits of every kind whatsoever now in force and effect and heretofore granted to Carolina, said amendment to become effective upon the legal date of the merger.

8. Piedmont shall operate the properties of Carolina as the Carolina Division of Piedmont. The gas rate tariffs, schedules, riders, and service regulations now in effect in Carolina shall continue in force and effect as the rates, charges and regulations applicable to the Carolina Division of Piedmont until further order of the Commission.

9. All of the above are contingent upon the condition that Carolina receive a ruling from the Internal Revenue Service to the effect that (1) the merger will be a tax-free reorganization under Section 368(a)(1)(A) of the Internal Revenue Code of 1954; and (2) the provisions of Section 306(a) of said Code will not apply to the shares of Piedmont's Second Preferred Stock to be received in the merger by stockholders of Carolina.

10. Not anything herein contained shall be construed to imply any guarantee or obligation as to said stock, debentures, warrants, bonds, notes or interest thereon, on the part of the State of North Carolina.

11. Not anything herein contained shall be construed as a finding by the Commission as to the value of the properties merged or shall prejudice the Commission in determining the fair rate of return to be allowed the surviving corporation in any further proceeding or any other matter which may properly come before the Commission.

12. Piedmont shall file with this Commission, when available in final form:

(a) A certified document showing that the Plan of Merger or Agreement of Merger has been approved by the holders of the issued and outstanding shareholders of Carolina and Piedmont; and

(b) A copy of the Twelfth Supplemental Indenture issued to Morgan Guaranty Trust Company of New York; and the Second Supplemental Indenture issued to First National City Bank.

13. Piedmont shall file with this Commission, within a period of thirty (30) days following the completion of the transaction authorized herein, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted, such report to include copies of the journal entries to be entered on Piedmont's general books of account recording the transactions in connection with the merger.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Piedmont Natural Gas Company, Inc., and Carolina Natural Gas Corporation to Merge Carolina Natural Gas Corporation into Piedmont Natural Gas Company, Inc., and for Authority to Issue Securities Pursuant to the Terms of Such Merger	AMENDMENT TO ORDER

Pursuant to a Joint Application by Piedmont Natural Gas Company, Inc., and Carolina Natural Gas Corporation for approval of a merger agreement and for authority to issue securities, and Order was issued July 2, 1968, in Docket No. G-9, Sub 69, approving the authority therein requested. Subsequently, the Order was found to be in error with respect to the maturity date of certain outstanding Debentures.

IT IS THEREFORE ORDERED, That the Order issued July 2, 1968, as identified above, be and the same is hereby amended as follows:

Page 3, Finding of Fact Number 4 should be deleted in entirety and substituted as follows:

Piedmont is to issue 51,000 shares of new class of $6.00 Cumulative Convertible Second Preferred Stock (without par value, $25.00 stated value and $100.00 liquidating value), 50,807 shares of which are to be issued for conversion of Carolina's common capital stock. Piedmont is also to issue in connection with said merger the following First Mortgage Bonds and Debentures for Carolina's outstanding First Mortgage Bonds and Debentures:

First Mortgage 6% Bonds, 1968 Series Due 1985	$ 430,000
First Mortgage 5-1/2% Bonds, 1968 Series Due 1987	457,000
First Mortgage 5-1/8% Bonds, 1968 Series Due 1988	750,000
First Mortgage 5-7/8% Bonds, 1968 Series Due 1991	600,000
5-1/2% Debentures Due May, 1988	1,400,000

Page 6, Ordering Clause Number 3 should be deleted in entirety and substituted as follows:

Piedmont be authorized to issue in connection with the merger the following First Mortgage Bonds and Debentures:

First Mortgage 6% Bonds, 1968 Series Due 1985	$ 430,000
First Mortgage 5-1/2% Bonds, 1968 Series Due 1987	457,000
First Mortgage 5-1/8% Bonds, 1968 Series Due 1988	750,000
First Mortgage 5-7/8% Bonds, 1968 Series Due 1991	600,000
5-1/2% Debentures Due May, 1988	1,400,000

IT IS FURTHER ORDERED, That except as amended above, the said Order of July 2, 1968, shall be and remain in full force and effect.

IT IS FURTHER ORDERED, That a copy of this Amendment be transmitted to all parties receiving copies of said Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-22, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Mount Airy Gas Company, Inc., Mount Airy, North Carolina	) ORDER AUTHORIZING) ABANDONMENT OF SERVICE) AND CANCELLING CERTIFICATE

On August 2, 1968, Mount Airy Gas Company, Inc. filed with the North Carolina Utilities Commission an application for authority to abandon service under the Certificate of Public Convenience and Necessity granted to it by this Commission in Docket No. G-22.

Based on the application treated as an affidavit and the official records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. That Mount Airy Gas Company, Inc. is a North Carolina corporation with its principal office and place of business in Mount Airy, Surry County, North Carolina.

2. That the North Carolina Utilities Commission in Docket No. G-22 authorized Mount Airy Gas Company, Inc. to distribute and sell gas through mains and lines to the public for compensation in the Town of Mount Airy.

3. That on December 31, 1966, Mount Airy Gas Company, Inc. terminated the furnishing of gas service through mains in Mount Airy and since that time the gas lines have been abandoned. Customers which are receiving gas service are furnished said service by bottle gas companies.

4. That with the abandonment of said service public convenience and necessity no longer requires service by the Mount Airy Gas Company, Inc. as a gas public utility in Mount Airy.

Based on the foregoing findings of fact the Commission is of the opinion that Mount Airy Gas Company, Inc. should be permitted to abandon gas service in Mount Airy and further that its Certificate of Public Convenience and Necessity heretofore issued by this Commission should be cancelled and terminated.

IT IS THEREFORE ORDERED That Mount Airy Gas Company, Inc. be and is hereby authorized to abandon its gas utility service in Mount Airy, North Carolina.

IT IS FURTHER ORDERED That the Certificate of Public Convenience and Necessity heretofore granted to Mount Airy Gas Company, Inc. in Docket No. G-22 be and is hereby cancelled and terminated.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 70

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Piedmont Natural Gas Company Service Regulation Relating to Promotional Policy Applicable to Subdivision and Apartment Entrance Outdoor Gas Lighting	)) ORDER))

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on October 1, 1968, at 10:00 a.m.

BEFORE: Commissioner John W. McDevitt (Presiding), and Commissioners Thomas R. Eller, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Respondent:

Jerry W. Amos
McLendon, Brim, Brooks, Pierce & Daniels
Attorneys at Law
P. O. Drawer U, Greensboro, North Carolina

For the Commission's Staff:

Edward B. Hipp
Commission Counsel
P. O. Box 991, Raleigh, North Carolina 27602

Larry G. Ford
Associate General Counsel
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: Having informally studied the promotional policies of the natural gas utilities in the State, and so determining that Piedmont Natural Gas Company (Piedmont) was the only such utility engaging in the practice of supplying natural gas free for promotional purposes, the Commission on May 3, 1968, called on Piedmont to file tariffs establishing the policy for approval pursuant to G.S. 62-140 [particularly section (c)] reading as follows:

G.S. 62-140. "Discrimination prohibited. - (a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section.

(b) The Commission shall make reasonable and just rules and regulations:

(1) To prevent discrimination in the rates or services of public utilities.
(2) To prevent the giving, paying or receiving of any rebate or bonus, directly or indirectly, or misleading or deceiving the public in any manner as to rates charged for the services of public utilities.

(c) No public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility service except upon filing of a schedule of such compensation or consideration or equipment to be furnished and approval thereof by the

> Commission, and offering such compensation, consideration or equipment to all persons within the same classification using or applying for such public utility service; provided, in considering the reasonableness of any such schedule filed by a public utility the Commission shall consider, among other things, evidence of consideration or compensation paid by any competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of such competitor's service. Provided, further, that nothing herein shall prohibit a public utility from carrying out any contractual commitment in existence at the time of the enactment hereof, so long as such program does not extend beyond December 31, 1963."

Piedmont then filed its policy reading in pertinent part as follows:

> "To advertise the availability of natural gas service in newly developed areas, the company, at its sole discretion, installs outdoor gas lights at the entrance only of new residential subdivisions and/or apartment projects which are to be served from the distribution system of the company. All necessary facilities are owned and maintained by and the gas is furnished by the company."

The Commission then scheduled and held public hearings on the tariff as captioned. A number of letters in support of Piedmont's policy were received from various developers in and around Charlotte. The Rules of Evidence prevent the Commission from considering such letters and giving weight thereto on the merits. No one other than the Company presented evidence in the proceedings.

Piedmont officials presented testimony tending to show how the policy had been and would be applied. We have no reason to doubt Piedmont's sincerity or good faith in offering the service as an advertising method and we think the policy does serve some advertising, or promotional, purposes for natural gas.

Notwithstanding Piedmont's testimony and the weight we have given it, we must disapprove the tariff for the following reasons:

(1) The tariff itself is so vague, uncertain, and lacking in appropriate standards assuring equal treatment of all applicants for the service as to require its disapproval as a public utility offering. One illustration is that the service is to be provided in Piedmont's "sole discretion." An offering by a utility must assure that all those in the classification to which offered may obtain the service on demand and upon showing that the conditions of service,

costs, and usage characteristics do not materially differ from those others receiving or entitled to receive the service.

(2) Piedmont has an approved, established tariff providing for the furnishing of natural gas for compensation to residential subdivisions and apartments. G.S. 62-132 prohibits the furnishing of gas under conditions different from those specified in established tariffs. We hold that the furnishing of natural gas in new residential subdivisions and for apartment houses without charge is a furnishing of service at rates different from the established tariff. It is also different in service conditions in that the established tariff applies to all customers of the classification alike while the policy before us limits applicability to those new residential subdivisions and apartments taking natural gas.

(3) The Supreme Court of North Carolina in Utilities Commission v. City of Wilson, 252 NC 640 (1960) held that the furnishing of telephone service free to municipalities was discriminatory and the Court further held a statute attempting to validate utility contracts for the provision of telephone service free to municipalities was unconstitutional. We are unable to distinguish in prinicple the provision of natural gas service to subdivisions and apartments from the provision of telephone service free to municipalities.

G.S. 62-3(23)(d) provides that "... if any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this chapter." Based upon this statute, since Piedmont does not install the street lights involved as a part of its utility operation, but sells them through its separate, unregulated merchandise operation, it should be observed that Piedmont cannot be prohibited by this Commission from disposing of outdoor gas lights as it sees fit. This is so to the extent Piedmont does not place its investment in such lights in its rate base to be charged to its ratepayers and to the extent Piedmont's utility rates are not otherwise charged or affected by the practice. In other words, Piedmont may lawfully furnish gas lights so long as it is done through its unregulated merchandising operation without any associated costs or investments being charged to, or permitted to affect, its utility rates and services; Piedmont may not furnish natural gas without charge to burn said lights for the reason that the provision of natural gas is fundamentally a part of its regulated utility service and to do so would be contrary to provisions of law and Piedmont's established utility tariffs.

For the foregoing reasons, IT IS ORDERED:

1. That the Piedmont Natural Gas Company policy filed in this docket and discussed in the premises be, and the same

is hereby, disapproved and denied effectiveness as a public utility policy and tariff.

2. Piedmont Natural Gas Company shall, effective January 1, 1969, discontinue the practice of furnishing natural gas without charge in and for new residential subdivisions and apartments, or otherwise.

3. Piedmont Natural Gas Company shall take all steps necessary to remove from its utility plant in service accounts those outdoor lights and fixtures heretofore installed in residential subdivisions or at apartment projects other than pursuant to established utility tariffs and shall adjust its utility plant accounts and utility plant depreciation reserve accounts accordingly.

4. In making the adjustments herein provided, Piedmont is not required to physically remove any outdoor lights heretofore installed and is not by this order prohibited from furnishing and/or installing such outdoor lamps provided that all such costs and revenues associated with installation and maintenance of such lights installed or furnished other than pursuant to established public utility tariffs shall be charged to Piedmont's unregulated merchandising operations and treated as charges or other income to stockholders for utility regulatory and rate purposes.

5. Piedmont shall notify the Commission thirty (30) days in advance of the account adjustments proposed pursuant to this order and shall detail the amounts and the accounting treatment proposed.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. H-7, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of the Housing Authority of the City of Rocky Mount to Amend Certificate of Public Convenience and Necessity for the Construction of 200 additional Low-Rent Housing Units in the City of Rocky Mount	RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on Thursday, June 27, 1968, at 2 p.m.

BEFORE: Clawson L. Williams, Jr., Hearing Commissioner

APPEARANCES:

For the Applicant:

James W. Keel, Jr., Esq.
Keel & Keel
Attorneys at Law
Peoples Bank Building
Rocky Mount, North Carolina

No Protestants.

WILLIAMS, COMMISSIONER: On May 29, 1968, the Housing Authority of the City of Rocky Mount filed application to amend its Certificate of Public Convenience and Necessity to permit the establishment, development, construction, maintenance and operation of 200 additional units of low-rent housing, and for authority to exercise the right of eminent domain for the acquisition of property upon which said units are to be constructed.

By Order of the Commission, dated June 4, 1968, the matter was set for public hearing before the Commission and notice was duly given by publication in The Evening Telegram, a newspaper having general circulation in the Rocky Mount area and hearing was held as captioned.

No protests were filed with the Commission prior to the hearing, nor did anyone appear at said hearing in opposition to the application.

Based upon the evidence adduced at the hearing and the exhibits offered, the Commission makes the following

FINDINGS OF FACT

1. That the Housing Authority of the City of Rocky Mount is a duly created and existing body corporate under the Housing Authority Law, Chapter 157 of the General Statutes of North Carolina.

2. That the Housing Authority of the City of Rocky Mount holds a Certificate of Public Convenience and Necessity issued by Order of this Commission under date of February 26, 1952, which Order granted the right and power of eminent domain in connection with the acquisition of property necessary to construct 320 dwelling units of low-rent public housing. Said Certificate of Public Convenience and Necessity was amended by Order, dated October 26, 1956, under which Order said Authority was granted the right of eminent domain in connection with the acquisition of property necessary to construct 200 additional low-rent dwelling units.

3. That all of the 520 units heretofore authorized have been constructed and all are presently occupied and there are now in excess of 100 applications from low-income families for occupancy of said units.

4. That a survey conducted by the Planning Department of the City of Rocky Mount in June, 1967 showed that there were 168 substandard houses in the City of Rocky Mount and that there is an urgent need for additional low-rent housing units, which need cannot be fulfilled by private capital or private enterprise.

5. That on June 30, 1967, the Housing Authority adopted a resolution authorizing the Executive Director to make application to the Housing Assistance Administration for financial assistance in the construction of 200 additional dwelling units for low-rent public housing in the amount of $30,000.00, and that on August 17, 1967, the City Council of the City of Rocky Mount, North Carolina adopted a resolution determining that there exist in the City of Rocky Mount a need for 200 additional low-rent housing units and approved the application of the Housing Authority for a preliminary loan of $30,000.00 for surveys and planning in connection with the construction of such units.

6. That on November 17, 1967, the Housing Authority and the City of Rocky Mount executed a Cooperation Agreement relating to the furnishing of public services by the City and payment by the Housing Authority to the City of a sum in lieu of taxes for such services, which Cooperation Agreement has been approved by the Department of Housing and Urban Development.

7. That application has been made by the Housing Authority of the City of Rocky Mount to the Public Housing Administration for financial assistance in the construction of 200 additional dwelling units and a preliminary loan in the amount of $30,000, and the Housing Authority of the City of Rocky Mount has been assured by the Public Housing Administration that said application and loan would be approved and the funds advanced as soon as available.

8. That the Housing Authority of the City of Rocky Mount is ready, willing, able and otherwise fit to carry out the

lawful purposes in connection with the establishment and maintenance of the proposed low rent housing project.

9. That the Housing Authority of the City of Rocky Mount has complied with all necessary requirements to acquire property and construct 200 additional low-rent dwelling units and is entitled to have its Certificate of Public Convenience and Necessity amended to that end.

The Commission, therefore, reaches the following

CONCLUSIONS

The City Council and the Housing Authority of the City of Rocky Mount have met the requirements of law with respect to the construction, maintenance and operation of low-rent housing units and urgent need has been demonstrated for additional low rent housing units and this need cannot be met by private capital.

IT IS THEREFORE, ORDERED that the Housing Authority of the City of Rocky Mount is hereby granted an amendment to its Certificate of Public Convenience and Necessity to establish, construct, maintain and operate 200 additional units of low-rent housing, and in that connection is authorized to exercise the power of eminent domain in the acquisition of property in the City of Rocky Mount, North Carolina, and this Order shall constitute such Amendment to such Certificate.

ISSUED BY ORDER OF THE COMMISSION.

This 12th day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. H-41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of the Housing Authority of the City of Raleigh, North Carolina, to amend and extend its Certificate of Public Convenience and Necessity for the establishment of 500 additional dwelling units of low-rent public housing	)	ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Thursday, November 30, 1967, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Applicant:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Box 2058, Raleigh, North Carolina

For the Protestants:

Millard R. Peebles, President
Biltmore Hills-Rochester Heights Civic Organization
721 Calloway Drive
Raleigh, North Carolina

Tim Kimrey
724 South East Street
Raleigh, North Carolina
For: Southside People's Organization

James F. Kenney
2100 Gilliam Lane
Raleigh, North Carolina 27610
For: Raleigh Inter-Church Housing Association

Wiley J. Latham
1303 South Bloodworth Street
Raleigh, North Carolina
For: Raleigh Citizens Association

ELLER, COMMISSIONER: This matter arises on application filed October 9, 1967, by the Housing Authority of the City of Raleigh, North Carolina, a corporation duly organized and existing under the North Carolina Housing Authorities Law of 1935, which is Article I of Chapter 157 of the General Statutes of North Carolina, seeking to amend and extend its certificate of public convenience and necessity for the development, construction, maintenance and operation of 500 additional dwelling units of low-rent public housing, for authority to exercise the right of eminent domain to carry out said project, and for other purposes incident thereto.

Public hearing was scheduled, duly noticed by publication in The News and Observer and The Raleigh Times (newspapers having general circulation in the Raleigh area), and held as captioned.

James F. Kenney, on behalf of the Raleigh Inter-Church Housing Association, filed written protest on November 17, 1967, against the Raleigh Housing Authority on two points:

"(1) That no public housing units be constructed in the south east quadrant of Raleigh.

"(2) That no public housing complex in any neighborhood consist of more than two hundred units."

No other written protests were filed with the Commission prior to the hearing; however, at the call of the hearing representatives from Biltmore Hills-Rochester Heights Civic Organization, Southside People's Organization, Raleigh Citizens Association, and the Raleigh Inter-Church Housing Association were present in opposition.

Upon the application and exhibits and the evidence adduced at the hearing, the Commission is of the opinion and makes the following

FINDINGS OF FACT

1. Applicant, Raleigh Housing Authority of the City of Raleigh, North Carolina, is a municipal corporation duly organized and existing under the North Carolina Housing Authorities Law of 1935, which is Article I of Chapter 157 of the General Statutes of North Carolina, is a proper party and is properly before this Commission in this proceeding. The Commission has jurisdiction over the subject matter of the application.

2. On or about the 24th day of January, 1939, the City of Raleigh Housing Authority filed application with this Commission seeking a certificate of public convenience and necessity and the authority to exercise the power of eminent domain in establishing, operating, and managing public aided housing in the City of Raleigh. On 24 January 1939, following hearing, the Commission entered its order granting the authority sought. On 24 March 1950 the City of Raleigh Housing Authority sought authorization for 450 additional dwelling units of low-rent public housing, which the Commission allowed by order dated March 31, 1950.

3. Among other duties, a public housing authority is required to investigate and keep itself informed concerning housing and living conditions, the approximate number of persons living in sub-standard houses, the family content and the economic condition of such persons, to make studies and surveys to determine such conditions and ascertain the number of sub-standard structures within the City. It has ascertained from the United States Bureau of the Census that there are now at least 5,226 families in the City of Raleigh occupying sub-standard housing.

4. On 29 April 1966 the Housing Authority of the City of Raleigh adopted its Resolution No. 222 authorizing the filing of an application for reservation of 500 dwelling units of low-rent public housing and a preliminary loan in the amount of $67,500. The City Council of the City of Raleigh, on 2 May 1966, by Resolution No. 315, approved the filing of the Housing Authority's application for reservation and preliminary loan, pursuant to which the Housing Authority filed and submitted to the Public Housing Administration its formal application requesting reservation of 500 new dwelling units to be provided by new construction, or by acquisition, or by acquisition and

rehabilitation of existing housing. Said program reservation for 500 dwelling units of low-rent public housing was duly approved and Program Reservation NC 2-B issued on July 8, 1966, by the Housing Assistance Administration.

5. All requirements necessary for a preliminary loan contract from the Housing Assistance Administration have been fulfilled by the Housing Authority of the City of Raleigh, and the Housing Authority has received from the Housing Assistance Administration a Preliminary Loan Contract covering 500 dwelling units of low-rent public housing and a preliminary loan of $67,500, which said contract is to be executed by the Authority and funds requisitioned as needed for the preliminary studies and planning of the 500 dwelling units covered thereunder.

6. A public need exists in the City of Raleigh for the Raleigh Housing Authority to amend and extend its certificate of public convenience and necessity for the establishment of 500 additional dwelling units of low-rent public housing as proposed in its application. It is reasonably necessary and in the public interest that said housing authority be empowered to exercise the right of eminent domain in carrying out its lawful objectives.

7. The Housing Authority of the City of Raleigh, North Carolina, is ready, willing, and able, and otherwise fit and qualified to fill the need for low-rent public housing in the City of Raleigh, and to otherwise carry out and fulfill its lawful purposes.

CONCLUSIONS

After full consideration of the application, the exhibits, the testimony, and the representations, all of which are of record in this proceeding, we conclude, pursuant to Section 51, Article 3, Chapter 157, of the General Statutes of North Carolina, that the Housing Authority of the City of Raleigh has met all necessary requirements of law to enable us to authorize the amendment and extension of its certificate of public convenience and necessity for the establishment of 500 additional dwelling units of low-rent public housing in the City of Raleigh, North Carolina, as set forth in its application, and is, therefore, entitled to amend and extend its certificate as requested in its application with all rights and privileges appurtenant and affixed thereto.

As explained to Protestants at the hearing, the North Carolina Utilities Commission does not have jurisdiction to determine the location of housing to be constructed under the certificate which it grants; nor may the certificate be denied or conditioned upon the choice of any particular site or area for locating the housing units involved. (See In re: Housing Authority of the City of Charlotte, North Carolina, Housing Project N.C. 3-3, 233 N.C. 649.) Further,

it is not within the Commission's discretion to control the style or architecture of the Authority's housing.

IT IS, THEREFORE, ORDERED:

1. That the Housing Authority of the City of Raleigh, North Carolina, be, and it is hereby, granted authority to amend and extend its certificate of public convenience and necessity for the establishment of 500 additional dwelling units of low-rent public housing as specified in its application filed with the North Carolina Utilities Commission on October 9, 1967.

2. This order shall of itself constitute and be taken as the authority to amend and extend the certificate of public convenience and necessity now held by the Housing Authority of the City of Raleigh with all rights, powers, privileges, and duties associated therewith, for and on behalf of the Housing Authority of the City of Raleigh, North Carolina, for the establishment of 500 additional dwelling units of low-rent public housing.

3. That a copy of this order shall be transmitted to the Applicant, to its counsel, and to the other parties of record.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. H-42.

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of the Graham Housing Authority, Graham, North Carolina, for a Certificate of Public Convenience and Necessity for the establishment, development, construction, maintenance and operation of 100 units of low rent housing, and for authority to exercise the right of eminent domain in the acquisition of property	ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on May 8, 1968

BEFORE: Commissioners Clawson L. Williams, Jr., M. Alexander Biggs, Jr., and John W. McDevitt, Presiding

APPEARANCES:

For the Applicant:

D. J. Walker, Jr.
Walker, Harris & Pierce
P. O. Box 471, Graham, North Carolina

No Protestants.

McDEVITT, COMMISSIONER: On April 8, 1968, the Graham Housing Authority, Graham, North Carolina, filed application for a Certificate of Public Convenience and Necessity for the establishment, development, construction, maintenance and operation of 100 units of low rent housing, and for authority to exercise the right of eminent domain in the acquisition of property, to be constructed in the City of Graham.

Public hearing was scheduled and held in accordance with notice published for two successive weeks in The Daily Times-News, a newspaper having general circulation in the area. No protests or interventions were filed and no one appeared in opposition to granting the Certificate.

Applicant presented seven exhibits consisting of certified copies of Affidavit of Insertion of Advertisement, documents relating to the establishment and organization of the Authority, excerpts from minutes of the meetings of the City Council of the City of Graham, Preliminary Loan Contract, and Consolidated Annual Contributions Contract.

Based upon the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. The Graham Housing Authority is a duly created and existing body corporate operating under the Housing Authority Law, Chapter 157 of the General Statutes of North Carolina.

2. Twenty-five residents of Graham filed a petition with the Town Clerk of Graham on May 15, 1966, stating that there is a lack of safe, sanitary dwelling accommodations in Graham for persons of low income and that there is a need for public housing facilities. Public hearing was scheduled and held as required by law and subsequently the City Council of Graham adopted a Resolution declaring a need for, and establishing a housing authority pursuant to the Statute.

3. A Preliminary Loan Contract was executed by the Department of Housing and Urban Development and the Graham Housing Authority covering plans and surveys in connection with the construction of up to one hundred (100) low-rent dwelling units for which a loan of $15,000 was authorized.

4. A public need exists for the construction by the Graham Housing Authority of safe, sanitary low-rent dwelling units of the type proposed for persons of low income. A survey showed that there are in the neighborhood of 270 to 300 sub-standard houses in Graham.

5. Graham Housing Authority is ready, willing, able and otherwise fit to carry out the lawful purposes in connection with establishing and maintaining the proposed low-rent housing project.

6. The Graham Housing Authority has complied with all requirements necessary to acquire the property and construct the dwelling units and is entitled to be issued a Certificate of Public Convenience and Necessity from this Commission.

CONCLUSIONS

The City Council of the City of Graham and the Graham Housing Authority have met the requirements of law with respect to the construction, maintenance and operation of low-rent housing units. Survey of housing facilities reveals an urgent need for additional low-rent housing units. The uncontradicted evidence leads to the conclusion that there is a need for additional low-rent housing facilities in Graham for the benefit of persons with low income and this need probably cannot be met by private capital.

IT IS, THEREFORE, ORDERED, That the Graham Housing Authority be, and it is hereby, granted a Certificate of Public Convenience and Necessity for the establishment, construction, maintenance and operation of 100 units of low rent housing, and for authority to exercise the right of eminent domain in the acquisition of property in the City of Graham, North Carolina, and this Order shall constitute such Certificate of Public Convenience and Necessity.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. H-43

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of the Kings Mountain Housing Authority, Kings Mountain, North Carolina for a Certificate of Public Convenience and Necessity for the Establishment, Construction, Development, Maintenance and Operation of 400 units of low rent housing units, of which the Housing Assistance Administration has approved initial Project N.C. 64-1, consisting of 150 dwelling units	RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on May 19, 1968, at 2 p.m.

BEFORE: Clawson L. Williams, Jr., Hearing Commissioner

APPEARANCES:

For the Applicant:

Robert L. Bradley
Garland, Alala, Bradley & Gray
Attorneys at Law
122 Cherokee Street
Kings Mountain, North Carolina

No Protestants.

WILLIAMS, COMMISSIONER: On May 17, 1968, the Kings Mountain Housing Authority, Kings Mountain, North Carolina filed application for a Certificate of Public Convenience and Necessity for the establishment, development, construction, maintenance and operation of 400 units of low rent housing, and for authority to exercise the right of eminent domain in the acquisition of property, to be constructed in the City of Kings Mountain, North Carolina.

By Order of the Commission, dated May 20, 1968, the matter was set for public hearing before the Commission and it was ordered that public notice be published in a newspaper of general circulation in the area once each week for two successive weeks. No protestants or interventions were filed and no one appeared in opposition to granting the Certificate.

Applicant offered the testimony of Mr. Thomas W. Harper, Executive Secretary of the Kings Mountain Housing Authority, affidavit of publication in the Kings Mountain Herald, pursuant to the Order of May 20, 1968 and five additional exhibits relating to the establishment and organization of the authority, pertinent excerpts from the minutes of the meetings of the Kings Mountain City Council, Notice of

Public Hearing before the City Council and Certificate of Incorporation of Kings Mountain Housing Authority.

Based upon the evidence and exhibits, the Commission makes the following

FINDINGS OF FACT

1. Kings Mountain Housing Authority is a duly created and existing body corporate under the Housing Authority Law, Chapter 157 of the General Statutes of North Carolina.

2. That on December 14, 1966, 25 residents of the City of Kings Mountain filed a petition with the Clerk of the City of Kings Mountain setting forth that there exists a lack of safe and sanitary dwelling accommodations in the City, particularly for persons of low income and that there is a need for public housing facilities and the creation of a Housing Authority.

3. That after due notice as required by law public hearing was held in the Council chambers in the City of Kings Mountain, North Carolina on December 27, 1966, for the purpose of affording interested persons an opportunity to be heard as to whether or not unsanitary or unsafe dwelling accommodations existed in the City of Kings Mountain and as to whether or not a need existed for a Housing Authority to function in that City. Thereafter the City Council adopted a resolution declaring a need for and establishing a Housing Authority pursuant to the statutes and thereafter said Housing Authority was duly chartered and created.

4. That on January 23, 1967, Kings Mountain Housing Authority made application to the Housing Assistance Administration for a preliminary loan for surveys and planning in connection with low rent housing projects and the construction of 400 low rent dwelling units which loan in the amount of $57,500.00 was granted. That the Housing Assistance Administration has approved initial Project N. C. 64-1, consisting of 150 dwelling units, and has entered into a cooperative agreement with the City of Kings Mountain and the Kings Mountain Housing Authority for the construction, maintenance and operation of low rent housing units, said agreement being dated June 15, 1967.

5. That surveys made in the City of Kings Mountain show that a public need exists for the construction by the Kings Mountain Housing Authority of 400 safe, sanitary, low rent dwelling units of the type proposed. The City of Kings Mountain has a present population in excess of 8,000 persons and 32.3% of the housing in said City is substandard.

6. That Kings Mountain Housing Authority is ready, willing, able and otherwise fit to carry out the lawful purposes in connection with the establishment and maintenance of the proposed low rent housing project.

7. That Kings Mountain Housing Authority has complied with all necessary requirements to acquire the property and construct the dwelling units and is entitled to a Certificate of Public Convenience and Necessity from this Commission.

The Commission, therefore, reaches the following

CONCLUSIONS

The City Council and Housing Authority of the City of Kings Mountain, North Carolina have met the requirements of law with respect to the construction, maintenance and operation of low rent housing units. Surveys of housing facilities show an urgent need for additional low rent housing units, and this need cannot be met by private capital.

IT IS, THEREFORE, ORDERED that the Kings Mountain Housing Authority be and it is hereby granted a Certificate of Public Convenience and Necessity for the establishment, construction, maintenance and operation of 400 units of low rent housing, and in that connection is authorized to exercise the right of eminent domain in the acquisition of property in the City of Kings Mountain, North Carolina, and this Order shall constitute such Certificate of Public Convenience and Necessity.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of June, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. H-44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Housing Authority of the City of Winston-Salem For Amendment of Its Certificate of Public Convenience and Necessity for the Development of 1,400 Additional Low-rent Housing Units) ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina on Wednesday, September 11, 1968 at 2 p.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Clawson L. Williams, Jr. (Presiding) and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

W. F. Womble, Esq.
Womble, Carlyle, Sandridge & Rice
Attorneys at Law
P. O. Box 84
Winston-Salem, North Carolina 27102

WILLIAMS, COMMISSIONER: On July 26, 1968, the Housing Authority of the City of Winston-Salem filed application to amend its Certificate of Public Convenience and Necessity to permit the establishment, development, construction, maintenance and operation of 1,400 additional units of low-rent housing and its authority to exercise the right of eminent domain for the acquisition of property upon which said units are to be constructed. By Order of this Commission, dated July 29, 1968, the matter was set for public hearing before the Commission and notice was duly given by publication in the Winston-Salem Journal, a newspaper having general circulation in the Winston-Salem area, and hearing was held as captioned.

No protests were filed with the Commission prior to the hearing, nor did anyone appear at said hearing in opposition to the application.

Based upon the evidence adduced at the hearing and the exhibits offered, the Commission makes the following

FINDINGS OF FACT

1. That the Housing Authority of the City of Winston-Salem is a duly created and existing body corporate under the Housing Authority Law, Chapter 157-1 of the General Statutes of North Carolina.

2. That the Housing Authority of the City of Winston-Salem holds a Certificate of Public Convenience and Necessity issued by Order of this Commission under date of November 4, 1941, which Order granted the right and power of eminent domain in connection with the acquisition of property necessary to construct 338 dwelling units of low-rent public housing. Said Certificate of Public Convenience and Necessity was amended by Order of this Commission, dated October 10, 1950, under which Order said authority was granted the right of eminent domain in connection with the acquisition of property necessary to construct 1,200 additional low-rent public housing units.

3. That all of the 1538 units heretofore authorized have been constructed and all are presently occupied.

4. That the Board of Aldermen of the City of Winston-Salem had made due investigation and has found and determined that there exists in Winston-Salem need for an

additional 1400 dwelling units, over and above the 1,538 units heretofore constructed, of decent, safe and sanitary low-rent dwellings, which need cannot be met by private capital or private enterprise, and said findings have been set forth in resolutions duly adopted by the Board of Aldermen of the City of Winston-Salem on September 20, 1965 finding need for and approving application for preliminary loan for 400 low-rent public housing dwelling units and on November 6, 1967 finding need for and approving application for preliminary loan for 1,000 low-rent public housing dwelling units. In addition the Board of Aldermen of the City of Winston-Salem also adopted resolutions on March 21, 1966 and on December 18, 1967 authorizing the execution of Amendments No. 2 and 3 to the Cooperation Agreement between the Housing Authority of the City of Winston-Salem and the City of Winston-Salem.

5. Pursuant to the above duly adopted resolutions Amendment No. 2 to the Cooperation Agreement to provide 400 additional units was executed on March 28, 1966 and on January 12, 1968 Amendment No. 3 to said Cooperation Agreement to provide 1000 additional units was executed. Said amendments, relating to the furnishing of public services by the City and payment by the Housing Authority to the City of a sum in lieu of taxes for such services, have been approved by the Department of Housing and Urban Development.

6. The Department of Housing and Urban Development of the Public Housing Administration has approved the construction of the 400 additional dwelling units and has also approved and executed Preliminary Loan Contract, dated April 12, 1966, in the amount of $47,500.00 for said 400 additional units. Applications for approval of Program Reservation and Preliminary Loan with respect to the additional 1000 units have been submitted to the Department of Housing and Urban Development of the Public Housing Administration and approval thereof is anticipated in due course.

7. That the Housing Authority of the City of Winston-Salem is ready, willing, able and otherwise fit to carry out the lawful purposes in connection with the establishment and maintenance of the proposed low-rent housing project.

8. That the Housing Authority of the City of Winston-Salem has complied with all necessary requirements to acquire property and construct 1400 additional low-rent dwelling units and is entitled to have its Certificate of Public Convenience and Necessity amended to that end.

The Commission, therefore, reaches the following

CONCLUSIONS

The Board of Aldermen and the Housing Authority of the City of Winston-Salem have met the requirements of law with respect to the construction, maintenance and operation of low-rent housing units and urgent need has been demonstrated for additional low-rent housing and this need cannot be met by private capital.

IT IS, THEREFORE, ORDERED that the Housing Authority of the City of Winston-Salem is hereby granted an amendment to its Certificate of Public Convenience and Necessity to establish, construct, maintain, and operate 1400 additional units of low-rent housing, and in that connection is authorized to exercise the power of eminent domain in the acquisition of property in the City of Winston-Salem, North Carolina, and this Order shall constitute such Amendment to such Certificate.

ISSUED BY ORDER OF THE COMMISSION.

This 26th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. H-45

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of the Burlington Housing Authority)
for a Certificate of Public Convenience and)
Necessity for the establishment of 250 units) ORDER
of low-rent housing)

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Tuesday, October 29, 1968, at 2:00 p.m.

BEFORE: Commissioners Thomas R. Eller, Jr. (Presiding), John W. McDevitt, and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

W. D. Madry
Attorney at Law
P. O. Box 27, Burlington, North Carolina 27215

ELLER, COMMISSIONER: This matter arises on application filed October 3, 1968, by the Burlington Housing Authority of the City of Burlington, North Carolina, a corporation

duly organized and existing under the North Carolina Housing Authorities Law of 1935, which is Article I of Chapter 157 of the General Statutes of North Carolina, seeking a Certificate of Public Convenience and Necessity for the development, construction, maintenance and operation of 250 low-rent public housing units, for authority to exercise the right of eminent domain to carry out said project, and for other purposes incident thereto.

Public hearing was scheduled, duly noticed by publication in The Daily Times-News (a newspaper having general circulation in the Burlington area), and held as captioned.

No written protests were filed with the Commission prior to the hearing nor was anyone present in opposition at the hearing.

Upon the application and exhibits and the evidence adduced at the hearing, the Commission is of the opinion and makes the following

FINDINGS OF FACT

1. Applicant, Burlington Housing Authority of the City of Burlington, North Carolina, is a municipal corporation duly organized and existing under the North Carolina Housing Authorities Law of 1935, which is Article I of Chapter 157 of the General Statutes of North Carolina, is a proper party and is properly before this Commission in this proceeding. The Commission has jurisdiction over the subject matter of the application.

2. On December 13, 1966, more than twenty-five (25) residents of the City of Burlington filed a petition with the Clerk of the City setting forth "that insanitary and unsafe dwelling accommodations exist in the City of Burlington, North Carolina, that there is a lack of safe and sanitary dwelling accommodations in said City available for all the inhabitants thereof and particularly for persons of low income, and that there is need for the Housing Authority to function therein".

3. On January 17, 1967, public hearing was held in the Courtroom in the City Hall, in the City of Burlington, North Carolina, where a large number of residents, taxpayers and other interested persons assembled and they were given an opportunity to be heard as to whether or not there is need for a Housing Authority to function in the City of Burlington.

4. Following said hearing on January 17, 1967, the City Council of the City of Burlington adopted Resolution No. 67-2. "A Resolution Declaring the Need for a Housing Authority to Function in the City of Burlington, North Carolina."

5. On May 1, 1967, a Certificate of Incorporation of the City of the Burlington Housing Authority was duly issued by the Secretary of State of North Carolina.

6. The Burlington Housing Authority made application to the Public Housing Administration, Housing Assistance Administration, Department of Housing and Urban Development, for a loan or grant to be used to construct a minimum of 250 housing units, and for preliminary loan for the purpose of making the necessary arrangements to the establishment of said units. Burlington Housing Authority has received approval of this application and has received from Public Housing Administration the sum of $101,244.00 for the necessary surveys, operating expenses, and other incidentals preliminary to the acquisition of lands and the construction of said 250 housing units, the project being designated NC-66-1. Burlington Housing Authority has complied fully with all of the requirements of the Housing Assistance Administration and other Federal agencies to proceed with acquisition of the necessary land and the construction of the said 250 housing units.

7. The Housing Authority of the City of Burlington, North Carolina, is ready, willing, and able, and otherwise fit and qualified to fill the need for low-rent public housing in the City of Burlington, and to otherwise carry out and fulfill its lawful purposes.

8. There are in the City of Burlington in excess of 1500 sub-standard dwellings basically unfit for reasonable human habitation. Private capital cannot reasonably be expected to bring these houses to standard. There is, therefore, a public need and demand for public housing in the City and 250 public housing units is a minimum in attempting to meet the need.

CONCLUSIONS

After full consideration of the application, the exhibits, the testimony, and the presentations, all of which are of record in this proceeding, we conclude, pursuant to Section 51, Article 3, Chapter 157, of the General Statutes of North Carolina, that the Housing Authority of the City of Burlington has established proof of need of said low-rent housing units and has met all necessary requirements of law to enable us to authorize a Certificate of Public Convenience and Necessity for the establishment of 250 dwelling units of low-rent public housing in the City of Burlington, North Carolina, as set forth in its application, and is, therefore, entitled to a Certificate of Public Convenience and Necessity.

IT IS, THEREFORE, ORDERED That the Housing Authority of the City of Burlington, North Carolina, be, and it is hereby, granted a Certificate of Public Convenience and Necessity for the establishment, construction, maintenance and operation of 250 dwelling units of low-rent public housing, and for authority to exercise the right of eminent domain to carry out said project, as specified in its application filed with the North Carolina Utilities Commission on October 3, 1968, and that this order shall constitute such Certificate of Public Convenience and Necessity.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-292

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the matter of
Application of Conley F. Green, Sr., P. O.)
Box 1169, Charlotte, North Carolina, to) ORDER
engage in the business of a broker)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on August 15, 1968

BEFORE: Chairman Harry T. Westcott and Commissioners M. Alexander Biggs, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

No Protestants or Intervenors.

WESCOTT, CHAIRMAN: By application filed June 3, 1968, under the provisions of G. S. 62-263 and the Commission's Rule R2-66, Conley F. Green, Sr., of Charlotte, North Carolina, seeks a license to engage in the business of a broker in intrastate operations within the State of North Carolina on a statewide basis; that is, to originate passenger tours at any point in North Carolina for any point in North Carolina and return.

Testimony in support of the application tends to show that Applicant is now an employee of the Moore Tours, Inc., and has been so engaged for the past ten years; was formerly employed by Queen City Coach Company as a driver who transported tours organized by the Moore Tours, Inc., for several years. That, in the conduct of his business, he plans to originate intrastate tours particularly to the historic points of North Carolina and to utilize the services of existing common carriers of passengers.

Two public witnesses appeared in support of the Applicant and offered testimony in support of his experience, having traveled with him both as a driver and as a conductor of tours, and further to his character and ability to perform the service sought by the instant application. Documentary evidence tends to show that the Applicant is financially able and can obtain such bond as is necessary for the protection of the public as set forth in G. S. 62-263 and the Commission's Rule R2-66.

After careful consideration of all evidence favorable to the application and there being none to the contrary, the Commission is of the opinion and finds that:

1. The Applicant is fit, willing, and able to properly perform the proposed service and to conform to the statutory provisions and the rules and regulations of the Commission pursuant thereto.

2. The proposed operation will be consistent with the public interest and effectuate the declared policy set forth in the statute applicable to motor carriers of passengers.

3. The Applicant is not a bona fide employee or agent of any carrier.

4. The Applicant proposes to engage only motor carriers authorized by this Commission to transport passengers by motor vehicle in intrastate commerce in North Carolina.

IT IS, THEREFORE, ORDERED:

1. That the application in Docket No. B-292 be granted and that the Applicant be issued a license to engage in the business of broker in the following territory: from and to any and all points within the State of North Carolina.

2. That under the provisions of G. S. 62-263 and the Rules and Regulations of the Commission [Rule R2-66(c)], Applicant shall file with the North Carolina Utilities Commission a bond to be approved by the Commission of not less than $5,000 in such form as will insure the financial responsibility of such broker and the supplying of authorized transportation in accordance with agreements, contracts, and arrangements therefor.

3. It is further ordered that this order shall become effective and a license issued to the Applicant when it has fully complied with the ordering clauses hereinabove set forth.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-275, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition by Carolina Coach Company, Fort Bragg Coach Company, Queen City Coach Company, and Greyhound Lines, Inc., for relief from Commission order and rules so as to permit separate bus stations at Fayetteville, North Carolina) ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on March 26, 1968

BEFORE: Chairman Harry T. Westcott and Commissioners John W. McDevitt, M. Alexander Biggs, Jr., Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Petitioners:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
For: Southern Greyhound Lines, Division of Greyhound Lines, Inc.

Arch T. Allen
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina 27602
For: Carolina Coach Company

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina 27602
For: Queen City Coach Company
Fort Bragg Coach Company

No Protestants.

ELLER, COMMISSIONER: These proceedings arise on joint petition of the four (4) motor passenger carriers operating into the presently established Union Bus Station at Fayetteville, North Carolina, seeking relief from the Commission's order of April 13, 1965, in Docket No. B-275, Sub 6, and the rules of the Commission so as to permit: (1) Greyhound Lines, Inc., to establish, maintain, and operate its separate bus station in Fayetteville and route its vehicles, passengers, baggage, and express shipments through said station, to be known as the "Greyhound Station"; (2)

Queen City Coach Company to assume operating responsibility for the present station into which Queen, Carolina Coach, and Fort Bragg Coach are to continue to operate, the station to be then known as the "Trailways Station."

The Commission set and held public hearings on the petition as captioned. No protests were filed; no intervention was sought; and no one appeared at the hearing in opposition to the granting of the petition. An extract of the official minutes of the City Council of the City of Fayetteville showing the Council's unanimous endorsement of separate stations was presented and received.

From the evidence adduced, we make the following

FINDINGS OF FACT

1. Petitioners, and each of them, are duly authorized common carriers of passengers, their baggage, and express shipments in intrastate commerce in North Carolina, operate into and out of the City of Fayetteville, Cumberland County, North Carolina, and are subject to the jurisdiction of the North Carolina Utilities Commission, which has jurisdiction over the subject matter of the proceedings.

2. For many years, the bus station at Fayetteville has been operated as a union station. The station is located on Gillespie Street about two (2) blocks south of the Market House. Pursuant to the Commission's order of April 13, 1965, in Docket No. B-275, Sub 6, a Board of Directors was established and the station is now operated under a Board of Directors consisting of representatives from each of the Petitioners under voting rights and by-laws prescribed and approved by the Commission. For many years prior to the order aforesaid, the union station had been operated with disharmony among the carriers. The Commission's order established a basis for operation in the absence of carrier agreement among themselves. While the order was intended to assure fair and impartial and harmonious operation of the station, this has not been the result. If anything, the pre-existing disharmony among the carriers appears to have increased under the Board of Directors, by-laws, and voting rights prescribed by the Commission.

3. The present station was constructed in about 1945 and has had constant use. It is now in serious need of renovation and repair. The nature of the market served (which includes one of the largest military installations in the country), the increased size of vehicles, and volume of passengers, express, and schedules, renders the present station completely inadequate for serving the four Petitioners and the traveling public, even if renovated.

4. The present station, if fully renovated and repaired, will be adequate for serving the three carriers desiring to remain there and their passengers. Queen City Coach Company, which effectively owns the present site, has a

satisfactory operating agreement with Carolina Coach Company and Fort Bragg Coach Company with which it is affiliated in the Trailways system and through stock ownership, respectively. Queen has agreed to renovate and modernize the present station for the benefit of the three carriers desiring to remain. No such agreement could be reached with Greyhound as a participating carrier.

5. The competitive relationship between members of the Trailways system and Greyhound Lines, Inc., for passengers, charters, and express is direct and vigorous. Neither system can compete to the extent it is entitled so long as the common sale of tickets and the common handling of express is required at Fayetteville.

CONCLUSIONS

1. We conclude that Petitioners are entitled to have their petition approved in the protection and furtherance of competitive rights assured them by law.

2. We hold, based on the evidence and conditions well-known to the Commission, that to allow Greyhound to establish a separate station at Fayetteville will tend better to serve the convenience and necessity of the traveling public there through improved service.

3. We further are of the opinion that granting the petition will tend to encourage and promote harmony among the carriers, which objective is a legislative declaration of policy for our guidance. G.S. 62-259.

4. Greyhound Lines, Inc., should be required to submit full details of the site it chooses and the facility it proposes to use and have the same approved by this Commission before terminating its operation into the present station.

5. Queen City Coach Company should be required to file with this Commission for approval its plans for the complete renovation of the present station.

6. Petitioners jointly should be required to file for approval in advance their plans for suitable transfer of passengers and baggage between the two stations herein authorized and should provide for the full connection of said two stations for the convenience of the traveling and shipping public.

Accordingly, IT IS ORDERED:

1. That the joint petition in this docket be, and it is hereby, approved, subject to the terms and conditions hereinafter.

2. That Petitioners, and each of them, be, and they hereby are, granted relief from the Commission's order

entered in Docket No. B-275, Sub 6, on April 13, 1965, and the rules of this Commission to the extent necessary to permit all actions petitioned for and herein approved.

3. That Petitioner, Greyhound Lines, Inc., be, and it hereby is, authorized to establish in the City of Fayetteville its separate and adequate passenger depot or station and station facilities for use in its passenger transportation operation from and to that City. Greyhound Lines, Inc., shall, within sixty (60) days from the date this order issues, submit to the Commission for its approval a map to scale showing location and size of the property it proposes to acquire for the construction of a station building and facilities and shall not purchase or construct thereon until the location has been approved by the Commission, provided nothing herein shall be construed to prohibit the entering upon options or deposit of earnest money in reasonable amount prior to said approval. Such location or site shall be as nearly accessible or near to the present bus station as is found reasonable by the Commission. Greyhound Lines, Inc., shall likewise submit to the Commission for approval plans and specifications showing the design and size of structures to be erected and shall not begin any construction until such plans and specifications shall have been approved by the Commission. Such plans and details shall provide for adequate available runways and loading and unloading docks, reasonable parking space, and shall show pertinent zoning and traffic regulations and plans related thereto. Upon the filing of the foregoing details, approval by this Commission, and acquisition and completion of the site and facilities as so approved, Greyhound Lines, Inc., shall be permitted to withdraw from the present station at Fayetteville and operate into and out of said separate site and facilities, which shall be known and identified as the "Greyhound Station."

4. That Petitioner, Queen City Coach Company, Inc., be, and it hereby is, authorized, through written working agreement with Carolina Coach Company and Fort Bragg Coach Company, to maintain, operate, and be fully responsible for the operation of the present bus station facilities in the City of Fayetteville from and after withdrawal by Greyhound Lines, Inc., as herein provided. Queen City Coach Company shall, within sixty (60) days from the date this order issues submit to the Commission in writing its plans and specifications for the renovation and repair of said station facilities and its proposed method of operation upon Greyhound's withdrawal as herein provided. Such plans and specifications shall include provisions for air-conditioning and other passenger comforts as discussed in the evidence and reported by the Commission's Staff. Queen City Coach Company, Carolina Coach Company, and Fort Bragg Coach Company shall, not less than thirty (30) days prior to the date Greyhound Lines, Inc., withdraws from said station as herein provided, submit to this Commission conformed copies of their finalized operating agreement for said station and

shall not operate thereunder until this Commission has approved the same. Upon Greyhound's withdrawal as herein provided and upon the filing of all plans and details herein required and their approval by this Commission, the present station in the City of Fayetteville shall be known and identified as the "Trailways Station."

5. It is a further provision of this order that Petitioners in this docket shall, before separating the station facilities as herein provided, file with this Commission for approval their detailed plans for routing the buses operating between Fort Bragg and Fayetteville by Petitioner, Fort Bragg Coach Company, so as to provide equal access by Fort Bragg passengers to both stations; for moving and interchanging passengers, baggage, and express between the two stations; for coordinating schedules and information between said stations; for the posting of schedules in each station for the other station; for the providing of free direct telephone information service between the two stations; and for other plans for minimizing passenger confusion and inconvenience resulting from separate stations.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-275, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Petition by Carolina Coach Company, Fort Bragg Coach Company, Queen City Coach Company, and Greyhound Lines, Inc., for relief from Commission order and rules so as to permit separate bus stations at Fayetteville, North Carolina (for approval of site in Fayetteville)	ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Thursday, August 8, 1968, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott (Presiding) and Commissioners Thomas R. Eller, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Petitioners:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
For: Southern Greyhound Lines, Division of Greyhound Lines, Inc.

For the Commission Staff:

Edward B. Hipp
Commission Counsel
P. O. Box 991, Raleigh, North Carolina 27602

No Protestants or Intervenors

WESTCOTT, CHAIRMAN: Order issued in this docket on 23 May 1968 authorizing (1) Southern Greyhound Lines, Division of Greyhound Lines, Inc. (Greyhound), to establish, maintain and operate its separate bus station in Fayetteville, and route its vehicles, passengers, baggage and express shipments through said station to be known as the "Greyhound Station"; (2) Queen City Coach Company to assume operating responsibility for the present station into which Queen, Carolina Coach, and Fort Bragg Coach are to continue to operate, the station to be known as the "Trailways Station."

In pertinent part, the order provided:

> "...Greyhound Lines, Inc., shall, within sixty (60) days from the date this order issues, submit to the Commission for its approval a map to scale showing location and size of the property it proposes to acquire for the construction of a station building and facilities and shall not purchase or construct thereon until the location has been approved by the Commission, provided nothing herein shall be construed to prohibit the entering upon options or deposit of earnest money in reasonable amount prior to said approval. Such location or site shall be as nearly accessible or near to the present bus station as is found reasonable by the Commission. Greyhound Lines, Inc., shall likewise submit to the Commission for approval plans and specifications showing the design and size of structures to be erected and shall not begin any construction until such plans and specifications shall have been approved by the Commission. Such plans and details shall provide for adequate available runways and loading and unloading docks, reasonable parking space, and shall show pertinent zoning and traffic regulations and plans related thereto. Upon the filing of the foregoing details, approval by this Commission, and acquisition and completion of the site and facilities as so

approved, Greyhound Lines, Inc., shall be permitted to withdraw from the present station at Fayetteville and operate into and out of said separate site and facilities, which shall be known and identified as the 'Greyhound Station'."

On 12 July 1968 Southern Greyhound Lines, Division of Greyhound Lines, Inc., filed its petition in this proceeding requesting approval of the site selected by the Company for location in Fayetteville, North Carolina, of the separate station authorized by the aforementioned order. This hearing was originally set for October 1, 1968, and notice was sent to those persons, organizations and companies listed on the mailing list attached to this order. Thereafter, at the request of the Petitioner, the hearing on October 1, 1968, was cancelled and the proceeding reassigned for hearing at 2:00 p.m., on Thursday, August 8, 1968, and notice of change of hearing date forwarded to the same persons, organizations and companies on the aforementioned mailing list.

Hearing was held with parties and counsel present as captioned, and after the request from the Chairman as to whether or not there were any persons other than the Petitioner present either in support or in opposition of the same and there being no response, the parties and counsel present as captioned proceeded to present the case to the Commission.

Having fully considered all matters arising on the hearing, the Commission now makes the following

FINDINGS OF FACT

1. Petitioner, Southern Greyhound Lines, Division of Greyhound Lines, Inc., is properly before the Commission in compliance with the Commission's order of 23 May 1968 and the Commission has jurisdiction over the subject matter of the Petitioner.

2. Greyhound has negotiated an option permitting the purchase of Lots 11, 12, Lot 7 and a portion of Lot 33 within the city block bounded by Person Street (U.S. 301-A), Kennedy Street, Russell Street and Cool Spring Lane, with frontage on Person Street of 197 feet extending in depth 330 feet, and Lot 7 and the portion of Lot 33 being an L-shape lot fronting 79 feet on Cool Spring Lane extending 203 feet back through Lot 33 of said block, and extending along the eastern line of Lot 33 to the back line of Lot 11, a distance of 149 feet, thence along the back line of Lot 11 in a westerly direction a distance of 70 feet; thence along a line the extension of the western boundary of Lot 11 and along the eastern line of Lot 6, a distance of 70 feet; thence along the northern boundary of Lot 7, a distance of 133 feet to Cool Spring Lane.

The total area of this proposed site is 85,947 square feet. It is a level lot located on paved streets with the frontage as indicated. Person Street is 69 feet wide, with 100-foot right of way, Cool Spring Lane, 22-foot wide pavement with 50-foot right of way and the property is properly zoned C-3, which includes and is suitable for a bus depot.

3. The proposed site is within 2,400 feet from the present Gillespie Street Union Bus Station Depot to Lot 7 on Cool Spring Lane or 3,000 feet from the Gillespie Street Station down Russell Street to Cool Spring Lane and to Person Street frontage and at most 3,200 feet via the Market Square.

4. The site will not require material alteration of Greyhound's or other inter-city carriers' routes of entry and departure from the City of Fayetteville, and the flow of traffic into this proposed station site has been cleared with the Joint Planning Director and Traffic Engineer charged with the duties and responsibilities of considering the same for the City of Fayetteville.

5. The proposed site will not interfere with the orderly development of the area surrounding it; it will present a suitable environment for a Greyhound Bus Depot and will be conducive to an orderly development of the area surrounding the proposed site.

6. The proposed site contains 85,000 square feet, whereas the present Union Bus Station site contains 39,000 square feet; compared to the City of Raleigh, the proposed site approved by order entered 3 July 1968 in Docket No. B-7, Sub 81, this proposed site contains a little more than 11,000 square feet more than this site approved in the Raleigh docket, and the proposed site will accommodate a building and terminal area large enough to provide adequate bus depot facilities at the present time and in the foreseeable future for a Greyhound Station.

CONCLUSIONS

1. The proposed site is reasonably adequate for meeting the present and reasonably foreseeable future passenger and express needs for the separate Greyhound Station as previously authorized.

2. The proposed site is reasonably proximate to the existing bus station and passengers can be interchanged between the proposed site and the existing station without unreasonable inconvenience and hardship to the traveling public and other inter-city carriers.

3. The street conditions and traffic patterns on the streets bounding the proposed site are such that no on-street parking should be contemplated or utilized by the station for servicing its patrons or employees. Further,

the proposed site is well-lighted on all sides as well as the streets directly between the proposed site and the existing station.

Accordingly, IT IS ORDERED That the petition of Southern Greyhound Lines, Division of Greyhound Lines, Inc., in this docket be, and the same hereby is approved, and the matter is retained by the Commission for the compliance by the Petitioner with the other provisions of the order entered in this docket on 23 May 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-275, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition by Queen City Coach Company and Greyhound Lines, Inc., for relief from Commission order of April 13, 1965, and the operation of the Winston-Salem and Gastonia Union Bus Stations by Greyhound and Queen, respectively, and to erect signs at the stations	) ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on March 26, 1968

BEFORE: Chairman Harry T. Westcott and Commissioners John W. McDevitt, M. Alexander Biggs, Jr., Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Petitioners:

J. Ruffin Bailey
Bailey, Dixon and Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Southern Greyhound Lines, Division of Greyhound Lines, Inc.

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building

Raleigh, North Carolina
For: Queen City Coach Company

No Protestants.

ELLER, COMMISSIONER: The proceedings in this docket arise on joint petition of Greyhound Lines, Inc., and Queen City Coach Company for relief from the Commission's order of April 13, 1965, in Docket No. B-275, Sub 6, so as to permit the carriers operating into the Winston-Salem Union Bus Station and the Gastonia Union Bus Station to discontinue the Board of Directors system of operation, cancel the by-laws governing the operations of these two stations, and enter voluntary agreements among themselves for the operation of the stations. By operating agreement of all carriers operating into the stations, Greyhound would assume full and complete responsibility for the operation, maintenance, administration, and employment of personnel at the Winston-Salem Union Bus Station and Queen would do likewise for the Union Bus Station at Gastonia. At each place, the carriers by agreement would erect appropriate signs identifying the carriers operating into the station.

The Commission scheduled and held public hearings as captioned. There were no interventions, protests, or other opposition to the granting of the petition.

Upon the evidence adduced, we make the following

FINDINGS OF FACT

1. Petitioners, Greyhound Lines, Inc., and Queen City Coach Company, are duly authorized motor carriers of passengers, their baggage and express in intrastate commerce in North Carolina. Both operate into the bus stations at Gastonia and Winston-Salem, North Carolina. Petitioners are properly before the Commission, which has jurisdiction, both over Petitioners and the manner and method of operation of the bus stations at Gastonia and Winston-Salem.

2. An additional authorized carrier, Gaston-Lincoln, Inc., operates into the bus station at Gastonia. An additional authorized carrier, Piedmont Coach Lines, Inc., operates into the station at Winston-Salem. Both of these carriers take the same position and make the same request as Petitioners for the stations they operate into.

3. Pursuant to Commission rules, the stations at Gastonia and Winston-Salem have been operated as union bus stations. Until shortly before the proceedings in Docket No. B-275, Sub 6, the carriers had a written working agreement for the operation and maintenance of both stations. These agreements were abrogated or expired in each instance and the carriers were unable to agree on a basis for operating the stations. This failure to agree, and the controversies associated therewith, gave rise to the Commission's order of April 13, 1965, in the mentioned

docket, which order, among other things, required the carriers to establish a Board of Directors consisting of representatives of the carriers operating into each respective station, prescribed by-laws governing the operations at each station, and establishing carrier voting rights on the Board of Directors. One of the provisions of the Commission order required that no employee of the station (i.e., of the Board of Directors) be at the same time an employee of any carrier operating into the station. Prior to the order, all employees at the Gastonia station effectively had been Queen employees and those at Winston-Salem had been Greyhound's. Labor problems developed following the order, particularly at Winston-Salem, where the station employees had been participants under Greyhound employees' system-wide labor contract and had built up pension fund reserves which cannot be established as well or economically in a small unit such as a single bus station as on a carrier's system-wide basis.

4. The operation of a station by a single entity under contractual rights voluntarily assured such as proposed in Gastonia and Winston-Salem is administratively less cumbersome and more efficient than the Board of Directors system and permits operating economies through centralized bookkeeping, accounting, and purchasing which are not present in a small, single-station unit.

5. While one of the basic purposes of the order from which relief is sought was to provide a basis for station operation in the absence of carrier agreement at the stations, it was also part of our purpose to assure impartial, fair treatment and representation by all carriers in the stations and to encourage harmony among the carriers. Although our order did establish a basis for station operation, the goals of harmony and fair treatment of the carriers were not materially realized. On the contrary, disharmony and contentiousness among the carriers seems to have increased under the Boards of Directors.

6. The relationship among the carriers at Gastonia and Winston-Salem is not as competitive as at other stations such as Fayetteville. At Winston-Salem, about 86% of the tickets sold are Greyhound's, with Queen having about 14% and Piedmont about 1%. At Gastonia, Queen sells about 74% of tickets sold and Greyhound sells about 26%. These percentages are due to the number of schedules and routes served by the respective carriers rather than competitive abuses. It is problematical whether Greyhound's schedules and tickets sold at Gastonia or Queen's at Winston-Salem would support or justify separate stations or enable either carrier to compete better at either city.

7. All carriers operating into the Gastonia and Winston-Salem stations have now voluntarily executed operating agreements setting forth their respective rights and obligations at said stations. The principal feature of these contracts is that the Gastonia station is to be

operated, maintained, and administered by Queen through the use of Queen employees and the other carriers will contribute to Queen their agreed amounts for Queen's service.
The same type agreement applies at Winston-Salem, except the responsible carrier there is Greyhound.

8. Among those things now agreed upon which could not previously be agreed upon is that prominent signs may be placed on the union station building identifying the two competing systems, Queen and Greyhound.

CONCLUSIONS

1. The voluntary operating agreements filed in this docket by carriers operating into the Gastonia and Winston-Salem Union Bus Stations form a reasonable basis for the operation and maintenance of said stations.

2. We are of the opinion that to permit relief from the Commission's order of April 13, 1965, to the extent the competing carriers may by agreement among themselves return to the previous method of operating the union bus station would be in the interests of the carriers financially, will tend to encourage and promote harmony among them, will best serve the interests of the station employees, will be in the best interest of the traveling public generally, and will tend to preserve the union bus station concept at Gastonia and Winston-Salem.

Accordingly, IT IS ORDERED:

1. That the petition in this docket be, and it is hereby, approved.

2. That the operating and lease agreements filed in this docket as Petitioners' Exhibit No. 1 on April 30, 1968, be, and the same are hereby, approved to become effective on June 1, 1968, or at such later time as Petitioners may request and obtain approval.

3. That Petitioners and Piedmont Coach Lines, Inc., be, and they are hereby, relieved of the requirements of the Commission's order of April 13, 1965, insofar as necessary and appropriate to effectuate the approval herein granted.

4. That the provisions of Commission Rule R2-55(m) are hereby waived for the Union Bus Stations at Gastonia and Winston-Salem to the extent that the carriers operating into said stations are hereby permitted to erect appropriate agreed signs identifying the carriers operating into said stations.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-7, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Southern Greyhound Lines of Greyhound Lines, Inc., to establish separate passenger depot or station facilities at Charlotte, North Carolina, and Raleigh, North Carolina (For approval of site in Raleigh)	ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Tuesday, June 4, 1968, at 9:30 a.m.

BEFORE: Chairman Harry T. Westcott (presiding) and Commissioners John W. McDevitt, Clawson L. Williams, Jr., and Thomas R. Eller, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Intervenor:

George A. Goodwyn
Assistant Attorney General
Old YMCA Building
Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Counsel
P. O. Box 991, Raleigh, North Carolina

ELLER, COMMISSIONER: Order issued in this docket on 25 August 1967 authorizing Southern Greyhound Lines, Division of Greyhound Lines, Inc. (Greyhound), to establish a passenger depot in Raleigh and Charlotte separate from the union stations now serving those municipalities. In pertinent part, the order provided:

"...that the petitioner submit to the Commission for its approval map showing location and size of the property it

proposes to acquire for the construction of station buildings and facilities and not enter into any contract for such acquisition until the location has been approved by the Commission. It will also submit to the Commission for approval plans and specifications showing the design and size of structures to be erected and shall not begin any construction until approval has been obtained from the Commission. Such plans and design must provide available runways, loading and unloading docks and reasonable parking space, all of which must have Commission approval."

On 26 April 1968 Greyhound filed petition in the docket seeking approval of a site for the separate Raleigh station pursuant to the order.

The Commission then set hearings on the petition, giving notice to the parties of record. The Commission also gave notice to and sought advice or testimony from the following: The Traffic Engineer, Planning Director, and the Chief of Police for the City of Raleigh; the Administrator of the State Highway Commission, and the Director of the Department of Administration for the State of North Carolina.

Hearing was held with parties and counsel present as captioned. The City of Raleigh and the State of North Carolina were represented by observers, with statements from these agencies being received by stipulation.

Having fully considered all matters arising on the hearing, the Commission now makes the following

FINDINGS OF FACT

1. Petitioner, Southern Greyhound Lines, Division of Greyhound Lines, Inc., is properly before the Commission in compliance with the Commission's order of 25 August 1967 and the Commission has jurisdiction over the subject matter of the Petitioner.

2. Greyhound has negotiated an option permitting the purchase of substantially all land within the city block bounded by Dawson, West Lane, North Harrington, and West Jones streets. The site for which Greyhound seeks approval pursuant to the order aforesaid is approximately the western half of the block, and bounded as follows: fronting 104 1/2 feet on West Jones Street, 210 feet on West Lane Street, 294 1/2 feet on North Harrington Street, and 420 feet north-south through the block, containing approximately 75,000 square feet.

3. The proposed site is three (3) city blocks (about 1,200 feet) north of the present union bus station located on West Morgan Street.

4. Beginning approximately at mid-point of the proposed site, it drops about 20 feet in elevation to Lane Street.

This topographical feature will require either grading or a structure designed for different levels.

5. The site will not require material alteration of Greyhound's or other inter-city carriers' routes of entry and departure from the City of Raleigh, nor will it in the foreseeable future promote intolerable traffic congestion or safety hazards by reason of its location.

6. The proposed site will not interfere with the orderly development of the area surrounding it; nor will it interfere with or degrade present plans of the State of North Carolina for the development of State property east of Dawson Street.

7. The proposed site is almost twice as large as the site of the present union bus station site and is large enough to accommodate about 11,800 square feet of sheltered terminal area with 7,500 square feet devoted to passenger seating, restaurant, toilet, information, and sales services and 3,000 square feet devoted to a separate facility for handling express shipments. The site, when utilized as generally proposed, is sufficient to accommodate 10 sheltered passenger loading zones, 20 stand-by buses, and 30 spaces for off-street customer parking.

8. Greyhound will have approximately 36 daily departures in winter and 44 in summer from the proposed site, with an estimated 930 passengers daily in winter and 1,800 in summer passing through the station.

CONCLUSIONS

1. The proposed site is reasonably adequate for meeting the present and reasonably foreseeable future passenger needs for the separate Greyhound station as previously authorized.

2. The proposed site is reasonably proximate to the existing bus station and passengers can be interchanged between the proposed site and the existing station without unreasonable inconvenience and hardship to the traveling public and other inter-city carriers.

3. The street conditions and traffic patterns on the streets bounding the proposed site are such that no on-street parking should be contemplated or utilized by the station for servicing its patrons or employees. Further, the proposed site should be well-lighted on all sides as should the streets directly between the proposed site and the existing station.

Accordingly, IT IS ORDERED:

1. That the petition of Southern Greyhound Lines, Division of Greyhound Lines, Inc., in this docket be, and the same hereby is, approved, it being a proviso of this

approval that Petitioner shall forthwith prepare and submit to this Commission for approval its full and complete plans and specifications for the utilization of said site, including but not limited to, its specific and definite plans for the terminal building facilities, sheltered loading zones, bus storage area, express and baggage handling facilities, customer parking facilities, routing of vehicles into, out of, and around the facility, and an artist or architect's sketch of the facility when constructed showing gradients of ingress and egress and grading proposed.

2. It is a specific provision of this approval that Petitioner shall design and plan the facility to be located on the site herein approved so that adequate "off-street" parking shall be provided and no "on-street" parking shall be proposed or used, whether for taxicab concessions or otherwise.

3. It is a further specific provision of this order that all inter-city bus lines now utilizing the Raleigh Union Bus Station forthwith submit detailed plans for the interchange of passengers, their baggage, and express between the present bus station and the separate station site herein approved, for the arrangement of scheduled departure times for the convenience of passengers utilizing both stations, for the installation of direct telephones between said stations for passenger information purposes, and for the posting of competitive lines' schedules in the two stations, existing and proposed.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-272, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Garland L. Gordon, d/b/a Appalachian Coach Company, 201 N. Jefferson Street, Galax, Virginia) RECOMMENDED ORDER

HEARD IN: Courtroom of Watauga County Courthouse, Boone, North Carolina, May 29, 1968, at 10:00 o'clock A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Garland L. Gordon
201 N. Jefferson Street
Galax, Virginia
(Appearing for himself)

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on April 22, 1968, Garland L. Gordon, d/b/a Appalachian Coach Company, Galax, Virginia, seeks to amend his motor passenger common carrier certificate to include authority to engage in the transportation of passengers, their baggage, mail and light express as follows:

"Between West Jefferson, North Carolina and Boone, North Carolina, from West Jefferson, North Carolina over U. S. Highway 221 to Deep Gap, North Carolina (intersection of U. S. Highway 221 and U. S. Highway 421) thence over U. S. Highway 421 to Boone, North Carolina serving all intermediate points."

Notice of said application was given by the Commission to all connecting and competing carriers. Additional notice was given by Applicant by publication in a newspaper of general circulation in the involved area on May 3, and May 10, 1968. Affidavits of the newspaper publication have been filed with the Commission and were received in evidence in this proceeding.

The application is unopposed and no one appeared at the hearing in opposition thereto.

Applicant also, by a Petition in Docket No. B-272, Sub 2 filed simultaneously, seeks authority to discontinue and abandon its franchise between West Jefferson and the North Carolina-Tennessee State Line leading to Johnson City, Tennessee. The application for new authority and the petition to abandon existing authority were consolidated for hearing but will be treated in separate orders.

Evidence in support of the application, there being none to the contrary, tends to show that presently there is no public transportation between the West Jefferson area and Boone and that, in fact, said area is completely isolated insofar as public transportation is concerned from other areas of the State of North Carolina; that a resident of the West Jefferson area seeking bus transportation to Boone or any other point in this State presently is required to take a circuitous route through Tennessee or Virginia; that if the authority sought is granted, a passenger from West Jefferson and points north will be able to travel direct to Boone and, through connections with other carriers at Boone, to other points within the State; that there are several

hundred students from the West Jefferson area enrolled in Appalachian State University at Boone, and that there is a definite and urgent need for the proposed service. Oral testimony supporting the application, in addition to Applicant, was given by Mr. David Blackburn, Mr. D. K. Taylor and Mr. Homer W. Brookshire. In addition, some twelve (12) letters and affidavits in support of the application from various individuals and business firms were offered and received in evidence.

It further appears that Applicant has adequate equipment and is well qualified, financially and otherwise, to provide the proposed service.

Upon consideration of the application and the evidence of record, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That a public demand and need exists for the proposed service in addition to existing authorized service.

2. That the applicant is fit, willing and able to properly perform the proposed service.

3. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that the applicant has carried the burden of proof required for the granting of the authority sought.

IT IS, THEREFORE, ORDERED That the application be, and the same is, hereby granted and that Certificate No. B-272 in the name of Garland L. Gordon, d/b/a Appalachian Coach Company be, and the same is, hereby amended to include the authority more particularly described in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED That Applicant make the appropriate tariff and time schedule filings and otherwise comply with the rules and regulations of this Commission and institute operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of June, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO.	B-272 SUB 1	Garland L. Gordon, d/b/a Appalachian Coach Company 201 N. Jefferson Street Galax, Virginia
EXHIBIT A		To transport passengers, baggage, mail and express over the following route serving all intermediate points: From West Jefferson, North Carolina, to Boone, North Carolina, over U.S. Highway 221 to Deep Gap, North Carolina (intersection of U.S. Highway 221 and U.S. Highway 421) thence over U.S. Highway 421 to Boone, North Carolina, and return over the same route.

DOCKET NO. B-272, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Garland L. Gordon, d/b/a Appalachian Coach Company, Galax, Virginia - Petition to abandon bus franchise between West Jefferson and the North Carolina-Tennessee State Line	) RECOMMENDED ORDER

HEARD IN: Courtroom of Watauga County Courthouse, Boone, North Carolina, on May 29, 1968, at 10:00 o'clock A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Garland L. Gordon
201 N. Jefferson Street
Galax, Virginia
(Appearing for himself)

No Protestants.

HUGHES, EXAMINER: By petition filed with the Commission on April 22, 1968, Garland L. Gordon, d/b/a Appalachian Coach Company, Galax, Virginia, seeks to discontinue motor common carrier passenger service between the North Carolina-Tennessee State Line and West Jefferson over an unnumbered road to the junction of such unnumbered road with N. C. Highway 88 just north of Creston and from junction of N. C. Highway 88 and unnumbered highway between Creston and Clifton over N. C. Highway 88, via Warrenville to West Jefferson. The petition was set for hearing at the

captioned time and place and notice thereof given to Applicant by order dated April 29, 1968.

The petition to abandon was treated under Rule R2-47 and Petitioner was required to post notice of the proposed discontinuance of service and the time and place of the hearing in buses serving the involved routes and in bus stations or other prominent places along said routes. In addition to the notice required by the Commission, Applicant caused notice of the Petition to be published in the Winston-Salem Journal, a newspaper of general circulation in the involved area, in its issues of May 3 and May 10, 1968.

No written protests to the proposed abandonment have been received by the Commission.

Evidence in support of the petition which was consolidated for hearing with the application in Docket No. B-272, Sub 1 tends to show that the service which Petitioner proposes to discontinue is being operated at a substantial loss; that for the period April 22, 1968, through May 5, 1968, Petitioner handled a total of eight (8) intrastate passengers within North Carolina for total revenue in the amount of $3.15 and for the period May 6, through May 21, 1968, total intrastate revenue over the North Carolina portion of the route amounted to only $1.65, and that for the period May 6, through May 21, 1968, the total of all revenue from both the North Carolina and Tennessee portions of the route amounted to $219.18 against a cost of $656.64, which resulted in a net loss of $437.46 for the period. Homer W. Brookshire, the Commission's Inspector in the involved area, testified that he had conducted a rather extensive investigation for the purpose of ascertaining the extent of the public need, if any, for a continuance of service over said route and had reached the conclusion that public convenience and necessity does not presently exist for the operation.

Mr. Worth Knox, of Creston, appeared at the hearing in opposition to the discontinuance of service; however, it appears he was the only person who had any interest in the matter at all and that his opposition was based upon the fact that he has utiliized the service on occasion to points outside the State for connections with air and rail service. Upon learning that such service would still be available under the authority which Petitioner seeks from West Jefferson to Boone, Mr. Knox indicated that this would satisfy his needs and, in effect, withdrew his opposition.

Upon consideration of the petition and the evidence adduced, the Hearing Examiner finds that public convenience and necessity no longer requires intrastate service over Petitioner's franchise between West Jefferson and the North Carolina-Tennessee State Line and concludes that the petition to abandon said franchise should be granted.

IT IS, THEREFORE, ORDERED That Garland L. Gordon, d/b/a Appalachian Coach Company, Galax, Virginia, be, and the same is, hereby authorized to abandon and discontinue service over the franchise route shown in Motor Passenger Common Carrier Certificate No. B-272 as follows:

"Between the North Carolina-Tennessee State Line and West Jefferson over an unnumbered road to the junction of such unnumbered road with N.C. Highway 88 just north of Creston and from junction of N.C. Highway 88 and unnumbered highway between Creston and Clifton over N.C. Highway 88, via Warrenville to West Jefferson."

IT IS FURTHER ORDERED That the discontinuance of service over said route shall become effective ten (10) days from the date that this order becomes final and that during said ten-day period, notice of the discontinuance of service be posted in the buses to the end that the public will be fully informed.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of June, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-15, SUB 152

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Carolina Coach Company to abandon the following franchise routes: (a) Between Charlotte and Newell as follows: From Charlotte over "Plaza Road" to Newell; (b) Between Newell and N.C. 27 as follows: From Newell over county road via Lemmon's Store to Hickory Grove, thence over Amity Road to N.C. 27; and (c) Beginning at junction of County Road 91 and 87 just northeast of Hickory Grove, over County Road 87 to its junction with County Road 93; thence over County Road 93 to junction of unnumbered county road about 1/10 mile north of N.C. 27; and thence via unnumbered country road in a northwesterly direction to its junction with County Road 91 just east of Hickory Grove	ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on May 9, 1968, and on July 3, 1968

BEFORE: Commissioners M. Alexander Biggs, Jr., presiding, John W. McDevitt and Clawson L. Williams, Jr. - May 9, 1968

Chairman Harry T. Westcott, and Commissioners M. Alexander Biggs, Jr., presiding, and John W. McDevitt - July 3, 1968

APPEARANCES:

For the Petitioner:

Arch T. Allen
Allen, Steed and Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Following the hearing held in this matter on May 9, 1968, the Commission entered an order directing that additional investigation be made in this matter by the Commission's Staff and by the petitioner. In said order it was suggested that such investigation might determine the feasibility of rescheduling the service along said route, which suggestion prompted petitioner to file with the Commission a revised schedule on June 4, 1968, under which the number of round trips per day would be reduced from five to two and the fares would be increased. Said filing was consolidated with this docket and the effective date of said revised time and fare schedule was suspended pending further hearing.

Further hearing was held on July 3, 1968, at which evidence was offered concerning the additional investigations made by petitioner and by the Commission's Staff. At said hearing, the petitioner stated that it still seeks a complete abandonment of the route in question but that it is willing to provide service on the reduced basis and at the increased fares prescribed in the above mentioned filing during a 60-day test period for the purpose of determining whether such reduced service and increased fares will attract a sufficient number of passengers to make continuation of such service economically feasible.

FINDINGS OF FACT

Based upon the evidence adduced at the hearings the Commission makes the following findings of fact:

1. The bus route in question, commonly referred to as the Hickory Grove Route, was established in the early 1940's to meet the needs of persons residing along said route who did not have public transportation available to them at that time. The bus operation along said route was initially provided by Carolina Coach Company, but since April 25,

1947, has been provided by lessees from said coach company, the most recent of which was Mr. Clyde N. Herron. Mr. Herron continued to provide bus service along said route until early this year when he notified petitioner that he would discontinue operations under said lease, effective April 23, 1968. Upon receipt of this notice from said lessee, Carolina Coach Company filed the petition herein for authority to abandon the route. Pending the determination of said petition, petitioner arranged with Mr. Herron for him to continue bus operations along said route at a guaranteed daily rate. Mr. Herron's operation was ended, however, about 10 days ago, since which time Carolina Coach Company has provided the service with its own equipment and personnel.

2. In recent years a number of factors beyond the control of the petitioner and its lessees have caused a substantial decline in the use of suburban commuter bus service. These factors include such things as increased numbers of automobiles, expanded city bus service, relocated places of employment, and the construction of suburban shopping centers. The bus service along the route in question has experienced such a decline, as evidenced by the fact that during the two-month period beginning April 22 and ending June 22, 1968, the five round trips made on the route in question each day carried only a total of 58.9 passengers per day and produced only an average daily revenue of $17.42. Such revenue was equal to 12.4 cents per bus mile and was about one-half of Mr. Herron's out-of-pocket operating expense and less than one-fourth of petitioner's system-wide operating expenses.

3. The petitioner, Carolina Coach Company, does not own any buses that are suited for this type of service. All of its buses have one door and are designed for intercity use and the commuter service in question needs two-door buses.

4. Notices of the petition to abandon and of the proposed revised schedule and fare increase have been posted and circulated, and a representative of the Commission has personally contacted most of the people who regularly ride the bus along this route. Although the Commission received objections to discontinuance of service, no protests have been offered to reduction of service and only one objection has been made to the increase in fares.

5. On the northernmost segment of the route (extending from the intersection of Harrisburg Road and Robinson Church Road, along Robinson Church Road to the Hickory Grove Road and thence north along the Newell - Hickory Grove Road to Plaza Road and thence westerly along Plaza Road and The Plaza to Central Avenue) there are only four persons who ride the buses to any measurable extent, and one of these lives within easy walking distance of the southernmost leg of the route. The petitioner has requested that its rescheduled service be provided only along the southernmost portion of the route so that the bus goes out and returns

over the same route. Such change in route would affect only three regular passengers and would reduce the mileage of the route somewhat.

CONCLUSIONS

Based upon the foregoing Findings of Fact it is concluded as follows:

1. That the demand and need for bus service along the entire Hickory Grove Route is not presently such that it would be economically feasible to continue same as presently scheduled and at present fares.

2. That the offer of Carolina Coach Company to provide reduced service along the southern portion of said route at increased fares, as prescribed in its filing with the Commission on June 4, 1968, for a 60-day test period, affords a reasonable means of determining whether there is such public interest for such service as will justify the continued operation of buses along said route.

3. That the proposed increased fares of 40¢ per one-way adult passenger fare, 25¢ per one-way child's fare and $3.00 per 10-ride commuter ticket are fair and reasonable charges and are in accordance with other prevailing bus fares for similar service.

4. That in order to justify the continuance of bus service along said revised route, as rescheduled and at said increased fares, it will be necessary for the number of persons using same to be increased, and a notice of the need for such increased use should be conspicuously posted and circulated so that interested persons may take heed of the circumstances under which the bus service is continued to be offered, the form of such notice being prescribed in Appendix A hereto attached.

IT IS, THEREFORE, ORDERED:

1. That effective upon the date of this order, the bus route in question is revised as follows:

It shall begin at the Union Bus Station on West Trade Street in Charlotte and run in an easterly direction on Trade Street to McDowell Street, and run thence on McDowell Street in a northerly direction to 7th Street, and run thence on 7th Street in an easterly direction to Central Avenue, and run thence along Central Avenue in an easterly direction to Sharon Amity Road, and run thence along Sharon Amity Road in a northerly direction to Hickory Grove Road, and run thence on Hickory Grove Road in an easterly direction to Pence Road, and run thence along Pence Road in an easterly direction to Harrisburg Road, and run thence along Harrisburg Road in a northerly direction to Robinson Church Road; and it shall return along said route to said Union Bus Station.

2. That from and after the date of the entry of this order, the bus service provided along said route shall be in accordance with the time schedules filed by the petitioner with the Commission on June 4, 1968, namely: two round trips a day, one leaving the Union Bus Station at 6:50 a.m. and the other leaving the Union Bus Station at 5:45 p.m., six days per week.

3. That from and after the date of the entry of this order, the following tariff schedule shall apply to the bus service along said route:

One-way adult fare	$ .40
One-way children's fare	.25
10-ride commutation fare	3.00

4. That hearing in this matter is further continued until 10 o'clock a.m., September 4, 1968, at which time the Commission will receive a report from the petitioner showing the number of persons who have ridden the buses along said route during the test period and the daily revenues derived from such operations. Interested persons may appear at said continued hearing and offer evidence if they so desire. As provided in the notice prescribed in Appendix A hereto attached, if no protests or objections to the discontinuance of service are received by August 30, 1968, the Commission may act upon the matter by reference to the report of petitioner without formal hearing.

5. That the notice prescribed in Appendix A hereto attached shall be posted in the buses operated along said route during the entire test period and copies of same shall be distributed to the passengers riding said bus at least one day each week during said period, which posting and distribution shall be certified to the Commission by petitioner at the expiration of the test period.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

APPENDIX A

IMPORTANT NOTICE

TO: Persons Interested in the Continuation of Bus Service from Charlotte to the Hickory Grove Community

FROM: The North Carolina Utilities Commission

Application has been filed by Carolina Coach Company to discontinue the bus service from downtown Charlotte along the Hickory Grove Route. The Commission has authorized the

bus company to reduce the service to two round trips per day and to increase the one-way fares from 30¢ to 40¢ for adults and 20¢ to 25¢ for children, with a 10-ride commutation ticket, $3.00. The route has also been changed so that the bus goes from Charlotte to the intersection of Harrisburg Road and Robinson Church Road along Central Avenue, Hickory Grove Road and Pence Road, and returns to Charlotte along the same route.

THE REVISED BUS SERVICE ALONG THIS ROUTE IS OFFERED ON A TEST BASIS UNTIL SEPTEMBER 4, 1968, to determine whether there is sufficient interest among the people to justify the operation of the bus thereafter. The evidence heretofore presented to the Commission indicates that there must be an increase in the number of persons riding these buses in order to justify the continuation of the service. It is hoped that the revised route and rescheduled service will cause an increase in use.

A further hearing is scheduled in this matter before the North Carolina Utilities Commission on September 4, 1968, at 10 o'clock a.m., at the Commission's offices in the old State Library Building, Raleigh, North Carolina. Interested persons should express themselves in writing about the bus service to the Commission on or before August 30, 1968, and if no such written expressions are received on or before said date, it may consider the petition of Carolina Coach Company to permanently abandon said bus service on the basis of reported revenues and passenger use during the test period, without formal hearing.

All inquiries and expressions of interest should be addressed as follows:

North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-15, SUB 152

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Carolina Coach Company to abandon the following franchise routes: (a) Between Charlotte and Newell as follows: From Charlotte over "Plaza Road" to Newell; (b) Between Newell and N.C. 27 as follows: From Newell over county road via Lemmon's Store to Hickory Grove, thence over Amity Road to N.C. 27; and (c) Beginning at junction of County Road 91 and 87 just northeast of Hickory Grove, over County Road 87 to its junction with County Road 93; thence over County Road 93 to junction of unnumbered county road about 1/10 mile north of N.C. 27; and thence via unnumbered county road in a northwesterly direction to its junction with County Road 91 just east of Hickory Grove	ORDER

HEARD IN: The Hearing Room of the Commission, Old Y.M.C.A. Building, Raleigh, North Carolina, on May 9, 1968, and July 3, 1968, and in the Hearing Room of the Commission, Library Building, Raleigh, North Carolina, on September 4, 1968

BEFORE: Commissioners M. Alexander Biggs, Jr., presiding, John W. McDevitt and Clawson L. Williams, Jr. - May 9, 1968

Chairman Harry T. Westcott, and Commissioners M. Alexander Biggs, Jr., presiding, and John W. McDevitt - July 3, 1968

Commissioners M. Alexander Biggs, Jr., presiding, John W. McDevitt and Clawson L. Williams, Jr. - September 4, 1968

APPEARANCES:

For the Petitioner:

Arch T. Allen
Allen, Steed and Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Pursuant to order issued in this cause on July 8, 1968, the petitioner, Carolina Coach

Company, was directed to continue bus service along the Hickory Grove Route in question during a test period extending from the date of the issue of said order for a period of sixty days, said service to be provided at certain increased fares, along a somewhat altered route, and on a reduced time schedule, all as specified in said order. Said order further directed the petitioner to post and distribute notices concerning the conditions under which said continued bus service was being provided. Hearing in this matter was continued by said order until 10:00 a.m., September 4, 1968, at which time the Commission was to receive a report from the petitioner of the results of its operations along said route during the test period and any further protests and objections that might be offered.

Prior to the date of hearing, the Commission received letters from some of the patrons of said bus service protesting the discontinuance of the service, which persons were advised by the Commission of the date, time and place of further hearing in this matter.

Further hearing was held herein on September 4, 1968, as specified in the order.

FINDINGS OF FACT

Based upon the evidence adduced at said further hearing and upon the other record herein, the Commission makes the following findings of fact:

1. Prior to the time that the bus service along said Hickory Grove Route was changed under the order of this Commission dated July 8, 1968, the total passengers riding the bus during the five round trips made on said route each day had dwindled to the point that the average daily revenue was about one-half of the out-of-pocket operating expenses of the petitioner's former operating lessee and less than one-fourth of the petitioner's system-wide operating costs. During the test period, the number of round trips were reduced from five to two and certain increased fares were put in effect. The average total passengers per day during said period for the two trips was 25.7 and the average daily revenue was $10.24 or 20.48 cents per bus mile, which patronage and revenue is far less than that needed to cover the cost of operating the buses along said route.

2. There is no indication that the number of persons riding the bus along said route will significantly increase, and the increased fares prescribed during the test period are as high as can be reasonably established for said bus rides.

3. Except for the service provided in recent months, the buses along said route have been operated by petitioner's lessee in conjunction with the lessee's other commuter bus operations in the Charlotte area. The lessee has terminated his operations along said bus route for the reason that such

operations involved financial loss to him and the petitioner has had to provide service with its own equipment since said termination. The petitioner is primarily an intercity carrier and has no commuter type buses that could be utilized in providing said service and the service that it has provided in recent months has been by utilizing drivers on an overtime basis and by operating intercity bus equipment.

4. There is no such need and demand for bus service along said route as to require the petitioner to continue providing said service at substantial financial loss, which losses are burdensome and detrimental to the other bus services provided by the petitioner.

CONCLUSIONS

It is concluded that the demand and need for bus transportation along the route in question is not sufficient to justify the Commission in ordering the petitioner to continue providing said bus service at a substantial financial loss, and there is no evidence to indicate that the petitioner can make any satisfactory arrangements to provide said bus transportation at either no loss or at an inconsequential loss. The Commission is reluctant to authorize the abandonment of a bus service that has been provided for so many years, but it recognizes that the demand for the type of bus service involved in this matter has been diminishing for some time and that in the instant case it has diminished to the point to where it can no longer be sustained or justified. The Commission is aware that some persons will probably be inconvenienced by the discontinuance of the service, but it is hoped that these persons will recognize that an expensive bus operation cannot be maintained for their benefit when the rates of other bus company patrons would have to be called upon to subsidize such service.

IT IS, THEREFORE, ORDERED that the petitioner be, and it is hereby, allowed to discontinue its bus service along the franchised routes mentioned in its application herein and along the altered route described in the order of this Commission dated July 8, 1968; and said franchised routes are hereby stricken from the intrastate franchised routes of petitioner. The authority to discontinue said bus service and abandon said routes shall become effective upon the issue of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-126

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Failure of Ed Fleming, d/b/a Fleming Bus Company, 160 S. Green Street, Greenville, North Carolina, to keep appropriate insurance on file	) ORDER) REVOKING) CERTIFICATE)

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, Friday, August 2, 1968, at 9:30 A.M.

BEFORE: Chairman Harry T. Westcott and Commissioners Clawson L. Williams, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For Respondent:

Neither present, nor represented by counsel

For the Commission Staff: (May 17, 1968, hearing)

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

BY THE COMMISSION: On March 29, 1968, the Commission issued an order suspending the operating authority of Ed Fleming, d/b/a Fleming Bus Company, 160 S. Green Street, Greenville, North Carolina, by reason of his failure to keep appropriate insurance on file with the Commission as required by G.S. 62-268. Said order further required Respondent to appear before the Commission at 10:30 a.m., Friday, May 17, 1968, and show cause, if any he had, why his operating authority should not be revoked for willful failure to maintain appropriate security for the protection of the public as required by G.S. 62-268. Said order was personally served on Ed Fleming on April 2, 1968.

Pursuant to the provisions of said order, the matter came on for hearing for the purpose set out therein on May 17, 1968, when and where the respondent was not present, nor was anyone present in his behalf. Upon consideration of information to the effect that Respondent was ill and had requested "a little more time," the hearing was continued until August 2, 1968, and notice of said continuance was personally served on Respondent on May 31, 1968. When the continued hearing was called on August 2, 1968, Respondent was not present, nor was anyone present in his behalf. A representative of the Motor Transportation Department of the Commission testified at the original hearing on May 17, 1968, and at the continued hearing on August 2, 1968, as to what the Department's files disclosed in regard to the insurance records of Respondent.

Based upon the pertinent records of the Commission, of which it takes judicial notice, the respondent's file and the competent evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That pursuant to the provisions of an order in this docket under date of October 24, 1950, the respondent is the holder of Certificate No. B-126 in which he is authorized to transport, as a contract carrier, certain passengers between certain points and places in the State of North Carolina.

2. That the Department of Motor Transportation of the Commission is the custodian of the motor carrier insurance records of the Commission, including the records of Respondent's insurance; that the Commission was notified on February 13, 1968, that the liability insurance of Respondent would be cancelled effective March 14, 1968; that the Director of the Department of Transportation of the Commission notified the respondent of said cancellation by letter dated February 13, 1968, with carbon copy to Respondent's insurance agent; that nothing having been done to keep said insurance in force, a show cause order was issued on March 29, 1968, suspending the operating authority of Respondent and directing Respondent to appear in the offices of the Commission on May 17, 1968, and show cause, if any he had, why his authority should not be cancelled by reason of his failure to keep insurance in force as required by law, and that said order was served on Respondent by an inspector of the Commission on April 2, 1968.

3. That at the hearing on May 17, 1968, and at the continued hearing on August 2, 1968, Respondent did not appear, nor did anyone appear in his behalf and that as of August 2, 1968, Respondent did not have on file with the Commission evidence of appropriate liability security for the protection of the public as required by G.S. 62-268.

Based on the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

G.S. 62-268 provides:

"Security for protection of public.-No certificate, permit or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Commission such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require."

Under the aforesaid findings and the applicable law, the Commission concludes that Respondent has willfully failed to comply with G.S. 62-268 and that Certificate No. B-126,

heretofore issued to Respondent, should be cancelled and revoked.

IT IS, THEREFORE, ORDERED That Certificate No. B-126, heretofore issued to Ed Fleming, d/b/a Fleming Bus Company, 160 S. Green Street, Greenville, North Carolina, be, and the same is, hereby revoked and cancelled.

IT IS FURTHER ORDERED That a copy of this order be transmitted to said Respondent and a copy sent to the North Carolina Department of Motor Vehicles.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-7, SUB 82

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Greyhound Lines, Inc., for a common carrier franchise certificate to transport passengers, their baggage, mail and light express over the following routes:

Between Fayetteville, North Carolina, and the junction of U.S. Highway 401 and Cumberland County Road No. 611

From Fayetteville, North Carolina, over North Carolina Highway 87 to Fort Bragg, North Carolina; thence over Cumberland County Road 613 to its junction with Cumberland County Road 1600; thence over said County Road 1600 to its junction with Cumberland County Road 611; thence over said County Road 611 to its junction with U.S. Highway 401, serving all intermediate points

RESTRICTION: No passenger is to be transported whose entire ride is between Fayetteville and Fort Bragg, North Carolina

) ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, September 19-22, 1967

BEFORE: Chairman Harry T. Westcott (presiding), and Commissioners Thomas R. Eller, Jr., John W. McDevitt, M. Alexander Biggs, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey and Kenneth Wooten, Jr.
Bailey, Dixon and Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Southern Greyhound Lines of Greyhound Lines, Inc.

For the Intervenors:

LTC Frank J. Dorsey
Regulatory Law Division
Office of the Judge Advocate General
Department of the Army
Washington, D. C. 20310
For: The Department of Defense

Captain Stanley E. McGinley
Office of the Staff Judge Advocate
HQ, XVIII Airborne Corps at Fort Bragg
Fort Bragg, North Carolina
For: The Department of Defense

For the Protestants:

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina
For: Queen City Coach Company
Fort Bragg Coach Company

James R. Nance and James R. Nance, Jr.
Nance, Barrington, Collier & Singleton
Attorneys at Law
First Union National Bank Building
Fayetteville, North Carolina
For: Queen City Coach Company
Fort Bragg Coach Company

BY THE COMMISSION: These proceedings arise upon application filed on March 13, 1967, by Greyhound Lines, Inc., 10 South Riverside Plaza (Gateway Center), Chicago, Illinois, for a common carrier franchise certificate to transport passengers, their baggage, mail and light express over the following routes, the routes being as set forth in the application:

"Between Fayetteville, North Carolina, and the junction of U.S. Highway 401 and Cumberland County Road No. 1611.

"From Fayetteville, North Carolina, over North Carolina Highway 87 to Fort Bragg, North Carolina; thence over

Cumberland County Road 1613 to its junction with Cumberland County Road 1600; thence over said County Road 1600 to its junction with Cumberland County Road 1611; thence over said County Road 1611 to its junction with U.S. Highway 401, serving all intermediate points.

"RESTRICTION: No passenger is to be transported whose entire ride is between Fayetteville and Fort Bragg, North Carolina."

This application was originally set for hearing on May 30, 1967, and continued to September 12 and finally to September 19, 1967.

Protest was filed by Queen City Coach Company and Fort Bragg Coach Company and received on May 18, 1967, and an amended protest of Queen City Coach Company and Fort Bragg Coach Company was received on September 1, 1967, which said amendment was subsequently allowed at the prehearing conference held on September 7.

Motion of the Secretary of the Army through its authorized counsel, the Judge Advocate General, on behalf of the Department of Defense, to intervene was received on September 5, 1967, and by order of the Commission dated September 5, 1967, intervention was allowed.

Proper publication and notice was accomplished and the matter was properly before the Commission for hearing on September 19, and hearing was held through September 22, 1967. For the purposes of this order the applicant will be referred to herein as "Greyhound", the Army as "Intervenor", and the protestants as "Queen" and "Fort Bragg Coach".

Greyhound presented testimony of some 28 witnesses together with documentary evidence intended to show that: (1) Public convenience and necessity require the proposed service in addition to existing authorized transportation service; (2) Greyhound is fit, willing and able to properly perform the proposed service; and (3) Greyhound is solvent and financially able to furnish adequate service on a continuing basis.

Protestants Queen and Fort Bragg Coach allege and contend that no public convenience and necessity such as required by the statute can be or has been shown.

There is nothing in the record to support any contentions by the protestants that Greyhound is not fit, willing or able to properly perform the proposed service, or that it is not solvent and financially able to furnish adequate service on a continuing basis. In fact, at the pretrial conference held on September 7, 1967, Queen and Fort Bragg Coach both stipulated that Greyhound is solvent and financially able to furnish adequate service on a continuing basis.

On the second issue Greyhound has carried the burden in that it is a regularly certificated common carrier of passengers of many years' standing in North Carolina; that it has filed annually its reports with the North Carolina Utilities Commission and filed its Exhibit No. 25 showing a list of the models and conditions of the buses which are licensed to operate in North Carolina, and it is presently operating the same number of schedules into and out of Fayetteville as it proposes to operate and will be able to use the same buses, same personnel and facilities to provide the additional service sought under this application.

FINDINGS OF FACT

1. That Greyhound is a common carrier holding a franchise certificate to transport passengers, their baggage, mail and light express over various routes in intrastate commerce and interstate commerce in North Carolina and in other states, and that it has the equipment necessary and is fit, willing and able to provide the facilities necessary to properly perform the proposed service; that it is solvent and financially able to furnish adequate service such as is proposed on a continuing basis.

2. That Greyhound has applied for interstate authority which would be identical to that sought in this application; however it does not intend to transport any passengers whose transportation is limited solely to movement between Fort Bragg and Fayetteville, North Carolina.

3. That Fort Bragg is a large military installation with its own shopping centers, banks, motels, schools and housing facilities and has a base population equal to or in excess of the population of Fayetteville, North Carolina.

4. That Greyhound proposes to serve Fort Bragg on its north-south schedule routes, proceeding south over U.S. Highway 401 to a junction with County Road 1611 and over County Road 1611 to the Fort Bragg Bus Station; from there it would go over N.C. Highway 87 into Fayetteville Bus Station and then proceed south over U.S. Highway 401. By this route it would serve not only Fort Bragg, but also passengers at Eureka Springs, North Carolina, a small community just east of Fort Bragg, as an intermediate point along this route. For north-bound traffic the route would be the reverse of the foregoing description. Until September 1, 1967, there was no intrastate service operating to or from Eureka Springs, North Carolina. Although Queen has held a certificate to serve Eureka Springs since the 23rd day of September, 1964, it had never offered service to or from Eureka Springs until September 1, 1967, after the interstate hearing and immediately prior to the prehearing conference in this particular docket, at which time it instituted a schedule offering service for the first time to Eureka Springs.

5. That the Fort Bragg Military Reservation is approximately 3 1/2 to 4 1/2 miles from the city limits of Fayetteville at its closest point along N.C. Highway 87. The proposed route amounts to an increase of approximately twelve miles to the present route operated by Greyhound and approximately twenty minutes to Greyhound's present time schedule. Greyhound is presently providing intrastate and interstate passengers with service to and from the Fort Bragg installation which requires its passengers to use other means of transportation from that installation to Fayetteville. The proposed service will eliminate the interline of passengers between the local bus service and the Greyhound bus service and will be a convenience to the passengers as well as better meet their needs for travel to and from the Fort Bragg installation.

CONCLUSIONS

1. The preponderance of the evidence leads this Commission to the conclusion that there is a need for the service as proposed by Greyhound in this case, with the exclusion or restriction as set forth in its application; that the testimony of the witnesses, including that of the Director of Services at Fort Bragg, has amply pointed up the fact that there is a need for the service between Fort Bragg and Eureka Springs and various points and places, including Wagram, Raleigh, Linden, Lillington, Durham, and other intrastate points in North Carolina.

2. Greyhound has borne the statutory burden of proof and has established to the satisfaction of the Commission that there is a public demand and need for the common carrier service proposed in the territory proposed in addition to the existing authorized service.

3. Greyhound has borne the burden of proof and has established that it is fit, willing and able to properly perform the proposed service.

4. Greyhound has borne the burden of proof and the protestants have stipulated that it is solvent and financially able to furnish adequate service on a continuing basis.

5. The route between Eureka Springs and Fayetteville via Fort Bragg although authorized for service is not being served and was not served by Queen until after this application was filed and just prior to the prehearing conference, and protestants Queen and Fort Bragg Coach still contend there is no need for the service which it had so recently instituted though for many years it had abandoned.

6. Greyhound should be restricted as proposed in the application in order that no passenger is to be transported whose entire ride is between Fayetteville and Fort Bragg, North Carolina.

Accordingly, IT IS ORDERED that Greyhound Lines, Inc., be and it is hereby granted a certificate of convenience and necessity to the extent as shown in Exhibit A hereto attached and made a part hereof, subject to compliance with the conditions and requirements relating to the filing of schedules with the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-7
SUB 82

Greyhound Lines, Inc.
10 South Riverside Plaza
(Gateway Center)
Chicago, Illinois 60606

EXHIBIT A

Transportation of passengers, their baggage, mail and light express over the following routes:

Between Fayetteville, North Carolina, and the junction of U.S. Highway 401 and Cumberland County Road No. 611.

From Fayetteville, North Carolina, over North Carolina Highway 87 to Fort Bragg, North Carolina; thence over Cumberland County Road 613 to its junction with Cumberland County Road 1600; thence over said County Road 1600 to its junction with Cumberland County Road 611; thence over said County Road 611 to its junction with U.S. Highway 401, serving all intermediate points.

RESTRICTION: No passenger is to be transported whose entire ride is between Fayetteville and Fort Bragg, North Carolina.

DOCKET NO. B-7, SUB 82

BIGGS, COMMISSIONER, DISSENTING: In my judgment the evidence presented by the applicant falls short of the showing required for the issuance of the operating authority sought in the application, and I am compelled to dissent to the issuance of any order granting such authority. Under G.S. 62-262, in cases of this kind, the burden of proof is upon the applicant to show to the satisfaction of the Commission "that public convenience and necessity require the proposed service in addition to existing authorized transportation service". The evidence presented by the

applicant not only fails to satisfy me that such service is required, but, in my opinion, fails as a matter of law to establish prima facie that such service is needed.

In this connection, I consider the following circumstances to be pertinent with respect to the applicant's showing:

1. With respect to proposed bus service to and from Fort Bragg:

The applicant's evidence shows that the population on the Fort Bragg military reservation exceeds 61,000 persons and that there are from time to time several thousand additional personnel who will be on the post for short periods of time. From these more than 61,000 persons the applicant presented the testimony of one officer and eight enlisted men and tendered for cross-examination three other enlisted men. Giving the applicant the greatest benefit possible from the testimony of these witnesses, such testimony does not sustain a need for the service proposed by the applicant. All of these witnesses testified to a need for intrastate transportation to the Raleigh-Durham area on weekends for recreational purposes or for purposes of getting to the Raleigh-Durham Airport. One witness mentioned an occasional visit with relatives in Durham. When questioned about the schedules of the proposed Greyhound service, all of the witnesses, except one, conceded that the northbound schedules would not be convenient for their travel purposes and only one of the southbound schedules would be convenient. At best this evidence can indicate no more than a need for a weekend commuter type service.

The service proposed by Greyhound involves no more than a rerouting of five through northbound buses and four through southbound buses, which buses are a part of the Greyhound bus service between New York and Florida. The evidence does not disclose whether these through buses would have empty seats on them when they would arrive at Fort Bragg going north or at Raleigh and Durham going south, but it is perfectly obvious that such buses would be limited in the number of passengers that could be carried. Certainly, such service would be inadequate to meet the intrastate travel needs of more than 61,000 military personnel.

The schedules of service proposed to be offered by Greyhound does not conform to the needs mentioned by the few military witnesses who testified. The northbound buses going to Raleigh leave Fort Bragg at 1:30 a.m., 4:35 a.m., 7:00 a.m. and 8:45 p.m. The southbound buses from Raleigh to Fort Bragg leave Raleigh at 6:40 p.m., 1:05 a.m., 5:30 p.m., 1:30 p.m. and 10:10 a.m. The military witnesses all testified that their weekend travel requirements to and from Raleigh would not be served by any of the northbound schedules and that only the 1:05 a.m. departure from Raleigh to Fort Bragg would be useful.

One witness did mention that the 8:45 p.m. departure from Fort Bragg to Raleigh would get him to Raleigh in time for the all night parties he attends, which begin about 11 p.m., but I do not consider the testimony of one such witness to have any weight on the issue in this case.

It is also worthy of note that the bus station at Fort Bragg would be closed (open from 7:30 a.m. to 4:30 p.m., Monday through Saturday) when all of the buses would pass through Fort Bragg, except for one schedule, and departing and arriving passengers would not have the benefit of the station waiting room, rest rooms, information service, telephones, or other facilities, and it is doubtful that taxi service would be available at these hours.

In summary, I consider that the evidence presented indicates at best only a need for weekend commuter bus service scheduled to meet the needs of soldiers desiring to travel to and from Raleigh for recreational purposes, and I cannot see that this evidence supports in any way the application of Greyhound Lines to divert certain of its through bus schedules through the military reservation at odd hours on a daily basis.

2. With respect to the proposed bus service to and from the Eureka Springs community:

The applicant presented testimony of 15 persons living in the Eureka Springs community and tendered the testimony of 29 other such persons, whose testimony, if it had been offered, would have been similar to that of those who testified. The testimony given by these witnesses and the other evidence presented by applicant tended to show that Eureka Springs is a small suburban community situated adjacent to the Fort Bragg military reservation on the east side thereof and lying a short distance north of the corporate limits of the City of Fayetteville; and that there is no direct bus service from the Eureka Springs community north to the Towns of Linden, Fuquay-Varina, Raleigh and Durham, although there is a recently initiated local bus service provided by Queen City Coach Company from said community to Fayetteville and Fort Bragg.

The testimony of these witnesses was further to the effect that they have a need for occasional bus transportation to the communities located north of Eureka Springs. This need arises in connection with occasional visits with relatives, with one witness describing a need for weekly transportation to and from Raleigh to attend Barber School. Most of these needs were conceded to be quite infrequent. Three witnesses testified that they operated businesses in the Eureka Springs area and had need of bus package express from Raleigh.

The evidence presented in support of the alleged need for bus transportation into Eureka Springs does not

describe, in my opinion, any need for bus transportation that could not be said to exist at every rural community in North Carolina. Every community has persons who occasionally travel by bus and who might occasionally receive bus express, but it is a practical fact that buses cannot be routed along every byway and through every community of the State. The people of Eureka Springs have local bus service into Fayetteville, from which point they can board the buses of several bus lines to any point in North Carolina and can obtain intrastate rail and airline transportation. In addition to the local bus service, mention was also made of taxi service to and from Fayetteville and Fort Bragg.

All in all, I do not consider that the evidence presented by applicant in support of its application to serve the Eureka Springs community is sufficient to show "that public convenience and necessity require the proposed service in addition to existing authorized transportation service".

In addition to the failure of applicant's evidence to sustain the burden of proof imposed upon applicant by G.S. 62-262, as aforesaid, I find objection to the granting of the authority sought for certain other reasons, as follows:

1. The service which Greyhound proposes to offer, being merely a rerouting of existing through bus service, would be burdensome to the bus service being rerouted. The evidence shows that these buses would have to travel 12.5 miles farther than at present over the heavily congested road running between Fayetteville and Fort Bragg and that an additional 39 minutes of running time would be required in order to run the buses through Fort Bragg and Eureka Springs. This additional time would be an inconvenience to the other passengers riding these buses, which inconvenience would not be offset by any advantage that is demonstrated under the evidence offered in this case.

2. The service proposed by Greyhound is a "closed door" service between Fayetteville and Fort Bragg, and would not offer transportation between these points or intermediate points between them. This type of service would not be understood by persons desiring to travel between these two points, and in my judgment it would be a very difficult restriction to enforce. Persons desiring to go from Fayetteville to Fort Bragg at the time of the departure of these buses could easily travel to Fort Bragg by purchasing a ticket to Eureka Springs for approximately the same fare and then get off at Fort Bragg.

3. Fort Bragg is now a suburb of the City of Fayetteville, and transportation between the post and city is provided throughout the military reservation. This bus service is similar to a city bus service in that the buses run at about 30 minute intervals over regular routes and

pick up passengers at designated bus stops. Fares are collected in a coin box. Soldiers desiring to leave the post are able to catch these buses at points near their barracks and ride directly into Fayetteville to the train and bus stations. The transportation facilities in Fayetteville operate 24 hours a day and serve all points. The bus station at Fort Bragg is open only from 7:30 a.m. to 4:30 p.m., Monday through Saturday, and is, according to applicant's evidence, an inadequate facility. I consider that the transportation needs of the persons residing in the Fayetteville-Fort Bragg community can best be served by single terminal facilities conveniently located for the residents of the entire area. Without adding additional schedules and equipment, which the applicant does not propose to do in this case, the present routes of Greyhound Lines, Inc., into and through the Fayetteville-Fort Bragg area are sufficient to serve the needs of those desiring to use the existing Greyhound service, and I do not feel that any rerouting of such buses would serve either the public or the bus company. To the contrary, I would consider that the rerouted bus service would be a detriment to its passengers.

The evidence in this case suggests that there may be some additional needs for bus transportation service in the Fort Bragg area, but these needs are not sufficiently demonstrated by the evidence in this case to warrant the issuance of the authority sought by applicant, and I cannot consent to the alteration of existing service to the detriment of the patrons of that service in order to enable Greyhound Lines, Inc., to gain an opportunity to provide some other type of bus service that is not involved in this application.

M. Alexander Biggs, Jr., Commissioner

DOCKET NO. B-69, SUB 100

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Queen City Coach Company to suspend)
operations over its franchise between Mars Hill) ORDER
and Spruce Pine, via U.S. Highways 19 and 19E)

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Thursday, January 18, 1968, at 2:00 p.m.

BEFORE: Commissioners John W. McDevitt, Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Petitioner:

R. C. Howison, Jr.
Attorney at Law
Joyner & Howison
Wachovia Bank Building
Raleigh, North Carolina

For the Intervenors:

Richard Sluder
Sluder Floral Company
Newland, North Carolina
Appearing in his own behalf

Joe Dislt
Tri-County News
Spruce Pine, North Carolina
Appearing in his own behalf

ELLER, COMMISSIONER: By its letter petition filed in this docket, Queen City Coach Company, seeks authority to suspend passenger operations over its Mars Hill-Spruce Pine route, via U.S. Highways 19 and 19E.

Deeming the matter of public interest, the Commission scheduled and held public hearings thereon as captioned. Petitioner was required to and did post notice at some eighteen (18) places along the route and in the Asheville Union Bus Station.

The Commission further notified interested persons and visited the route through its Transportation Inspection Division.

Upon the evidence adduced, we find and conclude that Queen City Coach Company is now operating over the route at a substantial loss and that the continuation of such operating losses would be unjustly burdensome on Queen City's existing operations and passengers in light of the present service needs and demands of passengers over the route.

Accordingly, IT IS ORDERED:

1. That Petitioner, Queen City Coach Company, be, and it hereby is, authorized to suspend operations over its route between Mars Hill and Spruce Pine, North Carolina, via U.S. Highways 19 and 19E for a period of one (1) year dating from March 15, 1968.

2. Queen City Coach Company shall report to this Commission's Division of Motor Transportation not later than February 15, 1969, concerning whether it should be required to resume operations over said route or whether the same

should be abandoned and the authority stricken from its franchise.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. B-82, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Silver Fox Lines, Inc., High Point,)
North Carolina, for Motor Carrier Authority to) ORDER
Transport Passengers, their Baggage, and Express)

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on September 25, 1968, at 2:00 P.M.

BEFORE: Commissioner Thomas R. Eller, Jr. (Presiding), and Commissioners John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

R. Mayne Albright
Albright, Parker and Sink
P. O. Box 1206, Raleigh, North Carolina 27602

D. P. Whitley, Jr.
Whitley and Washington
P. O. Box 569, High Point, North Carolina

For the Protestants:

J. Ruffin Bailey
Bailey, Dixon & Wooten
P. O. Box 2246, Raleigh, North Carolina 27602
For: Southern Greyhound Lines
Division of Greyhound Corporation

Arch T. Allen
Allen, Steed & Pullen
P. O. Box 2058, Raleigh, North Carolina
For: Carolina Coach Company

R. C. Howison, Jr.
Attorney of Record
Wachovia Bank Building
Raleigh, North Carolina
For: Queen City Coach Company

James M. Kimzey
Joyner & Howison
Wachovia Bank Building
Raleigh, North Carolina
For: Queen City Coach Company

ELLER, COMMISSIONER: These proceedings arise on application of Silver Fox Lines, Inc., 740 West Broad Street, High Point, North Carolina, for motor passenger authority as follows:

From Yanceyville, N.C., over U.S. Highway 158 to Reidsville, N. C., a distance of 25 miles; thence from Reidsville, N. C., to Stokesdale, N. C., over U. S. Highway 158, a distance of 21 miles; thence from Stokesdale, N. C., to Oak Ridge, N. C., over U. S. Highway 68, a distance of 5 miles; thence from Oak Ridge, N. C., to Kernersville, N. C., over U. S. Highway 150, a distance of 4 miles; thence from Kernersville, N. C., over U. S. Highway 66 to junction of U. S. Highway 66 and Highway 311, a distance of 9 miles; thence to High Point, N. C., over U. S. Highway 311, a distance of 6 miles.

Deeming the matter affected with the public interest, the Commission set public hearings on the application and gave notice thereof. Following notice, protests were filed and parties made as appears in the caption. Hearings were initially held on June 5, 1968, then recessed and resumed and concluded on September 25, 1968. Applicant presented some 24 witnesses; Protestants presented 2 witnesses. Both sides introduced exhibits directly and by reference as appear of record.

Applicant's evidence is intended, inter alia, to support its contention that: (a) public convenience and necessity require the proposed service in addition to existing authorized transportation service; (b) Applicant is fit, willing and able to properly perform the proposed service; and (c) Applicant is solvent and financially able to furnish adequate service on a continuing basis.

Protestants contend, and introduced evidence intended to show that: (1) the public convenience and necessity does not require the proposed service in addition to existing authorized service; (2) the granting of the application will provide competitive service in an area already adequately served; (3) the granting of the application as made would invoke the provisions of G.S. 62-262(f) requiring the Commission to find - as to those of Protestants' routes sought to be duplicated - that Protestants' service is inadequate and then allowing the affected Protestants reasonable time to remedy the inadequacies found; (4) Applicant is not within contemplation of law fit, willing, and able financially to provide the service proposed.

Having carefully considered the evidence and contentions of the parties in accordance with applicable law, we make the following

FINDINGS OF FACT

1. Applicant, Silver Fox Lines, Inc., is a duly created and existing corporation with headquarters in High Point, North Carolina. It does not hold intrastate operating authority in North Carolina, but does hold interstate motor passenger authority entitling it to operate, and it operates, between Danville, Virginia, and Yanceyville, North Carolina. By this application, it seeks to operate over a route beginning at Yanceyville (the North Carolina terminus of its interstate authority) and extending eastward to High Point, via Casville, Reidsville, Stokesdale, Oak Ridge, Kernersville, and the junction of U.S. Highway 66 and N.C. Highway 311, a total distance of approximately 70 miles. Applicant has not applied for interstate authority over the route.

2. Protestant, Greyhound Lines, Inc., holds authority and provides interstate and intrastate service between Danville and Greensboro via Reidsville with interchange at Greensboro for High Point. The route sought under the Application is over Greyhound's route on N. C. Highway 158 between Reidsville and Stokesdale, a distance of about 21 miles. The route sought intersects and crosses Greyhound's route at Reidsville and Kernersville.

3. Protestant, Carolina Coach Company, holds authority and provides interstate and intrastate service between Danville and High Point via Casville, Osceola, Monticello, and Greensboro. The route sought under the Application is over Carolina's route from High Point on Highway 311 to its junction with Highway 68, a distance of approximately 5 miles, 3 miles of which is outside the corporate limits of High Point. The route sought intersects Carolina's routes at Casville and at N. C. Highway 68, some 3 miles northwest of the corporate limits of High Point.

4. Protestant, Queen City Coach Company, holds authority and operates over U. S. Highway 311 between High Point and Winston-Salem. The route sought under the application is over Queen City's route on U. S. Highway 311 from High Point to its junction with U. S. Highway 66, a distance of about 6 miles.

5. Moore Brothers Company, which is owned and operated by essentially the same persons as the stockholders and operators of Silver Fox Lines, Inc., operates on exempt "industrial worker" bus over Highways 311 and 66 between High Point and Kernersville. If the application is granted, the owners would plan to discontinue the exempt operation and seek to obtain this patronage for the regulated service and schedules Silver Fox Lines, Inc., would then operate. Any schedules over the route sought would be arranged to

accommodate the work schedules of these workers rather than those along the entire route.

6. Applicant, Silver Fox Lines, Inc., has filed statement showing $15,085 in assets and $11,717 in liabilities, the latter not including approximately $2,500 loaned the corporation by the two Moore brothers.

7. Silver Fox Lines, Inc., owns two buses which could be used in operating the proposed service. In addition, through the other companies and operations conducted by the owners of the Capital Stock of Applicant, it has access to other buses, if needed. However, there is no written commitment for the availability of these additional buses to Silver Fox Lines, Inc.

8. Southern Pilgrim College, located in Kernersville about a mile from the bus station, has some 25 commuting students from the High Point area, living various distances from the bus station. These students are in various classes at various hours. They presently utilize their own private automobiles, individually and through pooling. None of these students testified to his need for the proposed service and there is no substantial, material and competent evidence that any of them presently need and would use the service if offered as proposed.

9. The Retail Merchants Association of Kernersville is interested in obtaining bus service from Kernersville to High Point and to Oak Ridge. There is no direct, substantial, material and competent evidence that any specific person, firm, or corporation at Kernersville has a present need for regulated bus passenger service; the Merchants Association being primarily interested in transportation of industrial workers, which is exempt, and in package delivery service.

10. A number of persons are apprehensive that Moore Brothers exempt transportation of industrial workers may be terminated and they will be left without this operation. There is no evidence that this is planned; nor is there substantial evidence that the proposed service between Kernersville and High Point is needed other than in substitution for Moore Brothers present exempt operation.

11. The proposed route is circuitous and duplicative as between Yanceyville and High Point and would not produce sufficent patronage to justify establishing and continuing the route as a whole.

CONCLUSIONS

1. Applicant has not borne the burden of proof to establish that public convenience and necessity require the proposed service in addition to existing authorized transportation service. [G.S. 62-262(e)]

2. There is insufficient substantial, competent and material evidence to justify a finding or conclusion that the service of Greyhound, Carolina, and Queen over the routes which the proposed service would duplicate is inadequate or otherwise deficient. [G.S. 62-262(f)]

3. Applicant has not borne the burden of proof to establish that it is financially and otherwise fit, willing, and able to perform the proposed service and furnish adequate service on a continuing basis. [G.S. 62-262(e)]

Accordingly, IT IS ORDERED:

1. That the Application of Silver Fox Lines, Inc., in this docket be, and the same hereby is, disapproved and denied.

2. That the proceedings in this docket be, and they hereby are, dismissed and this docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-105, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Suspension and Investigation of Proposed Increase In Bus Passenger Fares, Charter Coach Rates and Charges, Package Express Rates and Charges, and Certain Revised Rules, Scheduled to Become Effective May 1 and 20 and June 10, 1968	)))))

ORDER

HEARD IN: The Temporary Quarters of the Commission, Old YMCA Building, Raleigh, North Carolina on May 7, 1968

BEFORE: Chairman Harry T. Westcott, Commissioner M. Alexander Biggs, Jr. and Commissioner Clawson L. Williams, Jr. (Presiding)

APPEARANCES:

For the Respondents:

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina

For: Queen City Coach Company
Carolina Scenic Stages
Smoky Mountain Stages
Virginia Stages, Inc.

Arch T. Allen
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: Carolina Coach Company

David L. Ward, Jr.
Ward and Tucker
Attorneys at Law
310 Broad Street
New Bern, North Carolina
For: Seashore Transportation Company

Clarence H. Noah
Attorney at Law
1425 Park Drive
Raleigh, North Carolina
For: Southern Coach Company

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Southern Greyhound Lines, Division of
Greyhound Lines, Inc.

George A. Goodwyn
Assistant Attorney General
P. O. Box 629, Raleigh, North Carolina
For: The Using and Consuming Public

Edward B. Hipp
Attorney at Law
North Carolina Utilities Commission
Raleigh, North Carolina
For: The Commission Staff

No Protestants.

WILLIAMS, COMMISSIONER: Appalachian Coach Company, Garland L. Gordon, d/b/a; Carolina Coach Company, Carolina Scenic Stages, Central Bus Lines of N.C., S. D. Small, d/b/a; Southern Greyhound Lines, Division of Greyhound Lines, Inc.; Queen City Coach Company, Safety Transit Lines, R. H. Gauldin, d/b/a; Seashore Transportation Company, Smoky Mountain Stages, Inc., Suburban Coach Lines, Lawrence C. Stoker, d/b/a; Virginia Dare Transportation Company, Inc. and Virginia State Lines, Incorporated, filed with the Commission certain tariff schedules containing certain proposed increases in bus passenger fares involving intrastate traffic in North Carolina, scheduled to become effective May 1 and 20, 1968 and other subsequent dates.

National Bus Traffic Association, Inc., Agent, filed certain revised pages to its Carolina Charter Coach Tariff No. A-426, N.C.U.C. No. 199, containing proposed increases in charter coach rates and charges and its Southeastern Express Tariff No. A-604-B, N.C.U.C. No. 19 and Supplement No. 1 to its North Carolina Commodity Rate Tariff No. A-654-E, N.C.U.C. No. 186, containing proposed changes in certain bus express rules, rates and charges involving intrastate traffic for certain bus carriers operating in North Carolina, said carriers being as follows: Appalachian Coach Company, Garland L. Gordon, d/b/a; Carolina Coach Company; Carolina Scenic Stages; Central Buslines of N. C., S. D. Small, d/b/a; Gaston-Lincoln Transit, Inc.; Southern Greyhound Lines, Division of Greyhound Lines, Inc., Piedmont Coach Lines, Inc.; Queen City Coach Company; Safety Transit Lines, R. H. Gauldin, d/b/a; Seashore Transportation Company; Smoky Mountain Stages, Inc.; Southern Coach Company; Suburban Coach Lines; Virginia Dare Transportation Company, Inc.; Virginia Stage Lines, Incorporated and Wilkes Transportation Company, Inc.

By said tariffs filed, the Respondents seek to increase intrastate bus passenger fares, charter coach rates and charges, package express rates and charges and to amend certain rules and practices relating to the handling and shipment of package express.

The Commission, being of the opinion that said tariff revisions affected the rights and interest of the public, issued an Order dated April 24, 1968, suspending said tariff filing, and instituting an investigation to determine the justness, reasonableness and lawfulness of said schedules and setting the matter for hearing at the time and place set forth in the caption.

Subsequently on May 3, 1968, Southern Coach Company filed with the Commission its local passenger tariff No. 1-P, N.C.U.C. No. 13, containing proposed increases in its bus passenger fares on intrastate traffic in North Carolina, effective June 10, 1968. By Supplemental Order of Suspension and Investigation, dated May 30, 1968, this filing by Southern Coach Company was suspended pending the hearing in this matter.

Notice to the public was duly given as required by law and the rules of the Commission and the hearing was held in the temporary offices of the Commission on May 7, 1968 at 10 A.M. From the testimony and exhibits introduced into the record at the hearing by the Respondents and the Commission Staff, the Commission makes the following

FINDINGS OF FACT

1. The present bus passenger fares for account of Carolina Scenic Stages, Greyhound Lines, Inc., Queen City Coach Company, Smoky Mountain Stages, Inc., and Southern Coach Company are fixed at 3.15 cents per mile by Order of

the Commission in Docket No. B-105, Sub 8, dated June 29, 1959. The fares of the other Respondents herein reflect a basis of 3 cents per mile as authorized by Order of the Commission in Docket No. B-105, Sub 6, dated May 15, 1958. The proposed passenger fare increase amounts to eleven per cent of present rates. All Respondents herein are seeking approval of bus passenger fares at the rate of 3.5 cents per mile with a minimum fare of 35 cents, the present minimum fare being 30 cents.

2. Nine of the Respondents herein are proposing to increase their charter coach rates and charges to reflect the following rates for coaches with seating capacities of 38 passengers or less:

1. The live mile rate per coach from 60 cents per mile to 65 cents per mile.

2. Rate per deadhead mile per coach from 30 cents to 45 cents.

3. Hourly charge per coach from $9.35 to $9.75.

4. For first 4 hours or less from $37.40 or for first 5 hours or less from $46.75, as the case may be, to be for first 5 hours or less at $55.00, and

5. For maximum 24-hour period from $120.00 to be $136.50 per coach.

3. Respondents further propose a 10 per cent increase in charges for bus package express rates and a 10 per cent increase on bus express rates for shipments on flowers, shrubs, ferns and florist materials and supplies.

4. Respondents further seek to amend their rules and practices regarding the weight, size, value, storage and handling of bus passenger express.

5. That the last general increase in bus passenger fares was granted by this Commission in 1959 in Docket No. B-105, Sub 8. The last general increase in intrastate charter coach rates and charges was granted in 1958 in Docket No. B-105, Sub 6. The last general increase in intrastate bus package express rates was granted by this Commission in January, 1957. The last general increase in intrastate bus express rates on flowers, ferns, shrubs and florist materials and supplies was granted in October, 1965. That since the last rate increases involved in this proceeding were granted the Respondents have experienced and continue to experience constant increases in their costs of operations due to increases in costs of labor, equipment, repairs and parts, station rental and upkeep and taxes. That in addition to increased costs, Respondents have experienced a decrease in the number of passengers carried due to increasing competition from privately owned automobiles, airlines, and other modes of transportation.

6. That Respondents have experienced and continue to experience from year to year increased operating ratios and diminishing returns on their investments as a result of the factors set forth in Findings of Fact No. 5.

7. That in order to preserve adequate and efficient motor bus service within the State, it is essential that Respondents have revenues sufficient to support their costs of operation, maintenance, improvement and replacement of vehicles and facilities and to provide Respondents with a fair and reasonable profit on their operations.

8. That the proposed increases in passenger fares, charter coach rates and charges, package express rates and the proposed changes in the rules and practices for handling package express appear to the Commission, after due consideration of all of the evidence, to be just, reasonable and otherwise lawful.

Based upon the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

Respondents have justified the proposed increase in their rates and changes in their tariffs. The present condition of the Respondents operations and their operating ratios clearly indicate the need for additional revenues if Respondents are to continue to provide service to the public without reduction in the quality of that service. It appears from the evidence that economic pressures upon the Respondents compel the Commission to allow the increased rates proposed in this proceeding, and the amount of the rate increase proposed is reasonable, and will not result in any excessive return to the Respondent carriers, and

Accordingly, IT IS, THEREFORE, ORDERED That the Order of Suspension and Investigation issued in this docket, dated April 24, 1968, and the Supplemental Order of Suspension and Investigation, dated May 30, 1968, be and the same are hereby vacated and set aside and the Respondents are hereby permitted to put into effect the tariff changes proposed in this docket upon one day's notice to the Commission.

IT IS FURTHER ORDERED That this proceeding and the investigation instituted herein be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This 16th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-15, SUB 154

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition for approval of sale by Carolina Scenic Stages to Carolina Coach Company of intrastate franchise rights between Jacksonville and Wilmington, via Burgaw, and revocation of existing authority of Carolina Coach Company over said route	) ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on September 26, 1968, at 10 a.m.

BEFORE: Commissioners M. Alexander Biggs, Jr. (Presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Petitioners:

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina
For: Carolina Scenic Stages

Arch T. Allen
Allen, Steed and Pullen
Attorneys at Law
P.O. Box 2058, Raleigh, North Carolina
For: Carolina Coach Company

No Protestants.

BIGGS, COMMISSIONER: Petition was filed herein with the North Carolina Utilities Commission (Commission) on July 9, 1968, by Carolina Scenic Stages (Carolina Scenic) and Carolina Coach Company (Carolina Coach), wherein Carolina Scenic seeks approval of the Commission of a sale by it to Carolina Coach of its authority to transport passengers by motor vehicle over its franchised route between Jacksonville and Wilmington, North Carolina, via Burgaw, and wherein Carolina Coach seeks permission to surrender its authority to transport passengers by motor vehicle between Jacksonville and Wilmington, via Burgaw, with certain closed door restrictions. Notice of hearing of said petition was issued by the Commission on July 16, 1968, copy of which was served upon all of the bus companies having operations at points along the route in question.

This matter came on for hearing at the time prescribed in said notice, at which hearing appearances were made by the parties as stated in the caption.

FINDINGS OF FACT

Based upon the evidence adduced at said hearing, the Commission makes the following findings of fact:

1. That Carolina Scenic and Carolina Coach, both of which are duly organized and existing corporations, currently hold certificates of public convenience and necessity issued by the North Carolina Utilities Commission under which they are authorized to transport passengers by motor vehicle as common carriers over certain designated routes in the State of North Carolina, and as such carriers they are subject to the jurisdiction of this Commission.

2. That under North Carolina Certificate No. B-17 Carolina Scenic is presently authorized to transport passengers over and along the following described route:

"From Burgaw, N.C., over N.C. Highway 53 east via Maple Hill to junction of N.C. Highway 53 with U.S. Highway 258; thence over U.S. Highway 258 east one mile to junction with U.S. Highway 17, thence over U.S. Highway 17 east two miles to Jacksonville, N.C., and return.

"From Burgaw, N.C., south over U.S. Highway 117, to Wilmington, N.C., and return."

3. That under contract of sale dated May 13, 1968, Carolina Scenic has agreed to sell and transfer to Carolina Coach the above mentioned route between Jacksonville and Wilmington for the sum of $5,000, provided said sale is approved by the North Carolina Utilities Commission.

4. That Carolina Coach, under its North Carolina Certificate No. B-15, has authority to transport passengers over the same route as that mentioned in paragraph 2 above, except that its operations along said route are required to be "...with closed doors between Burgaw and Wilmington and with closed doors to passengers originating in Jacksonville destined to Wilmington, or originating in Wilmington destined to Jacksonville."

5. That the operations of Carolina Scenic over and along the route which it now seeks to sell to Carolina Coach resulted in such financial loss that it leased said route to Carolina Coach under lease agreement approved by order of the Commission dated November 14, 1966, issued in Docket No. B-15, Sub 144, and since the date of said lease, operations under said authority have been continuously constructed by Carolina Coach.

6. That in the exercise of its rights as lessee to operate over said route, Carolina Coach consolidated its bus operations between Jacksonville and Wilmington so that all of its operations were under the joint authority of said leased rights and of the authority held by it in its own name. Whether a single bus operation is sufficient to

constitute an exercise of two authorities is considered a moot question in these proceedings inasmuch as the operation actually conducted by Carolina Coach over said route, which was with open doors, was obviously an exercise of the leased authority, and the restricted authority now is to be surrendered if the sale is approved.

7. Carolina Scenic has sufficient assets and net worth to pay or adequately secure the payment of all its operating debts and obligations, including taxes due the State of North Carolina and any political subdivision thereof. Further, the Commission finds that the proposed sale of the franchised route in question is consistent with the purposes of Chapter 62 of the General Statutes of North Carolina, and that said sale will not result in a substantial change in the service and operations of either carrier and will not adversely affect the interest and travel requirements of the general public.

CONCLUSIONS

It is concluded that the proposed sale of the franchised route above mentioned by Carolina Scenic to Carolina Coach is consistent with the best interest of the two carriers and of the traveling public in that such sale will vest the authority to provide bus transportation along said route in the carrier that is and has been providing such transportation, which carrier assumes in its own right the duty of providing such bus transportation service as the citizens of the State need and desire along said route, which duty it is ready, willing and able to discharge. Further, the Commission concludes that the restricted authority heretofore held by Carolina Coach to provide bus service between Jacksonville and Wilmington, North Carolina, should be canceled for the reason that the authority has not been exercised independently of the broader authority leased from Carolina Scenic and affords no additional means of serving the traveling public. In other words, upon the acquisition by Carolina Coach of the broader authority from Carolina Scenic it will have no use whatsoever for the more restricted authority, and such authority would be merely surplusage in the listing of its franchised routes.

IT IS, THEREFORE, ORDERED AND ADJUDGED:

1. That the sale by Carolina Scenic Stages to Carolina Coach Company of the following described franchised route be and the same is hereby approved:

"From Burgaw, N.C., over N.C. Highway 53 east via Maple Hill to junction of N.C. Highway 53 with U.S. Highway 258; thence over U.S. Highway 258 east one mile to junction with U.S. Highway 17, thence over U.S. Highway 17 east two miles to Jacksonville, N.C., and return.

"From Burgaw, N.C., south over U.S. Highway 117, to Wilmington, N.C., and return."

2. That Carolina Coach be and it is hereby authorized to surrender its franchised route between Jacksonville and Wilmington, which authority contains certain closed door restrictions, and provides as follows:

"Between Jacksonville and Wilmington as follows: From Jacksonville over N.C. 53 to Burgaw, thence over U.S. 117 to Wilmington and with closed doors to passengers originating in Jacksonville destined to Wilmington, or originating in Wilmington destined to Jacksonville."

3. That North Carolina Certificate No. B-15, now held by Carolina Coach Company, be amended in accordance with the provisions of Exhibit A hereto attached.

4. That North Carolina Certificate No. B-17, now held by Carolina Scenic Stages, be amended in accordance with the provisions of Exhibit B hereto attached.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

EXHIBIT A

Amendment to North Carolina Certificate No. B-15, now held by Carolina Coach Company.

By deleting the following franchised route:

"Between Jacksonville and Wilmington as follows: From Jacksonville over N.C. 53 to Burgaw, thence over U.S. 117 to Wilmington with closed doors to passengers originating in Jacksonville destined to Wilmington, or originating in Wilmington destined to Jacksonville."

By adding the following franchised route:

"From Burgaw, N.C., over N.C. Highway 53 east via Maple Hill to junction of N.C. Highway 53 with U.S. Highway 258; thence over U.S. Highway 258 east one mile to junction with U.S. Highway 17, thence over U.S. Highway 17 east two miles to Jacksonville, N.C., and return.

"From Burgaw, N.C., south over U.S. Highway 117, to Wilmington, N.C., and return."

EXHIBIT B

Amendment to North Carolina Certificate No. B-17, now held by Carolina Scenic Stages.

By deleting the following franchised route:

"From Burgaw, N.C., over N.C. Highway 53 east via Maple Hill to junction of N.C. Highway 53 with U.S. Highway 258; thence over U.S. Highway 258 east one mile to junction with U.S. Highway 17, thence over U.S. Highway 17 east two miles to Jacksonville, N.C., and return.

"From Burgaw, N.C., south over U.S. Highway 117, to Wilmington, N.C., and return."

DOCKET NO. B-103 SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Proposed transfer from Greyhound Lines, Inc., to Wilkes Transportation Company, Inc., of certain motor passenger operating rights described as follows: (a) Over N.C. Highway 67 between Winston-Salem, N.C. and East Bend, N.C. and Booneville, N.C. and Elkin N.C., and (b) Over N.C. Highway 268 between Elkin, N.C., Ronda, N.C., Roaring River, N.C., and North Wilkesboro, N.C. (c) Over N.C. Highway 18 between North Wilkesboro, N.C., Moravian Falls, N.C., Boomer, N.C., Lenoir, N.C. Morganton, N.C.& return	RECOMMENDED ORDER

HEARD IN: North Wilkesboro City Hall, North Wilkesboro, North Carolina, on Thursday, October 24, 1968, at 10:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicants:

Kyle Hayes
Hayes and Hayes
Attorneys at Law
Box 64, North Wilkesboro, North Carolina
For: Wilkes Transportation Company, Inc.

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P.O. Box 2246, Raleigh, North Carolina
For: Greyhound Lines, Inc.

For the Intervener:

Jack A. Underdown
Town Commissioner
Elkin, North Carolina
For: The Town of Elkin, North Carolina

HUGHES, EXAMINER: By joint application filed with the Commission on July 30, 1968, Greyhound Lines, Inc., Transferor, and Wilkes Transportation Company, Inc., Transferee, seek approval of the transfer from said Transferor to said Transferee of certain intrastate bus franchise routes described as follows:

"(a) Over N.C. Highway 67 between Winston-Salem, N.C., and East Bend, N.C., and Booneville, N.C., and Elkin, N.C., and

"(b) Over N.C. Highway 268 between Elkin, N.C. Ronda, N.C., Roaring River, N.C., and North Wilkesboro, N.C.

"(c) Over N.C. Highway 18 between North Wilkesboro, N.C., Moravian Falls, N.C., Boomer, N.C., Lenoir, N.C., Morganton, N.C. & return."

Hearing was scheduled on the application and for the convenience of all parties was set to be held in the City Hall in North Wilkesboro, Wilkes County, North Carolina. Notice of said application and hearing was given by the Commission to parties of interest and to the mayors of all cities and towns located on the involved routes. Publicity regarding the application and hearing was also given in newspapers of general circulation in the area. While no formal written protest was made in the proceeding, the Town of Elkin was represented at the hearing by Town Commissioner Jack A. Underdown who was allowed to intervene in opposition to the proposed transfer of operating authority.

Hearing was held as scheduled on October 24, 1968. Applicants were present, represented by counsel and offered testimony and exhibits through witnesses. Intervener, Town of Elkin, was not represented by counsel but testimony was offered by its representative at the hearing.

It appears from evidence presented by Applicants that Transferee has held a passenger common carrier certificate from this Commission and has operated thereunder within Wilkes County and surrounding area since 1938 and that Transferee has operated between North Wilkesboro and Winston-Salem, via Elkin and Brooks Crossroads under an intrastate franchise leased from Transferor since 1951; that

if the application herein is approved, Transferee, to supplement its present fleet of seven (7) vehicles, has already arranged for the purchase and financing of two (2) additional buses similar to the buses which are now being operated by Greyhound over the involved routes; that Transferee has its own garage facilities with experienced mechanics, its chief mechanic having had some thirty-two (32) years experience with Greyhound; that although Transferee presently operates two intrastate round trips daily between Winston-Salem and North Wilkesboro under the lease from Greyhound, it is prohibited from handling interstate passengers and express and that if the transfer proposed herein is approved, a similar application to the Interstate Commerce Commission for interstate authority will be made immediately.

A relatively large number of public witnesses appeared at the hearing and offered testimony in support of the proposed transfer. Among these were the following: M. D. E. Elledge, Project Director of Wilkes Senior Citizens Council, who testified that he was well acquainted with the service of Wilkes Transportation Company, Inc., rides the bus frequently between North Wilkesboro and Winston-Salem, charters buses from Transferee on occasion for the Senior Citizens Council and that, in his opinion, the service of Transferee is satisfactory and equal to that of Greyhound; Mr. John Walker, former mayor of North Wilkesboro, who stated that, in his opinion, the public convenience and necessity would be promoted by the transfer and the resulting ability of Transferee to handle interstate passengers and freight; Mrs. Clifton Waddell, Ticket Agent at North Wilkesboro Bus Station, who pointed out that the present prohibition against Transferee's handling interstate passengers has greatly inconvenienced passengers holding interstate tickets who are sometimes required to wait several hours for a Greyhound bus; Mr. Vernon Deal, Senior Vice President of Northwestern Bank, who testified as to the value of Transferee's service to the involved areas, to the financial condition of Transferee and to the fact that his bank would finance the purchase of the two additional buses, heretofore referred to; Mr. Webb Smalling, Executive Director of Wilkes County Chamber of Commerce, who gave strong support to the application and offered the opinion that the proposed transfer would be justified by public convenience and necessity; Mr. Gaither Blackwelder, Pastor of the Lutheran Church, Teacher and Band Director at the Wilkes County High School, and President of Boys Town, who was most complimentary of the service presently being provided by Transferee and testified generally in support of the application; Mr. T. S. Kennerly, former mayor of North Wilkesboro, who testified that the service of Transferee has always been satisfactory and offered testimony generally in support of the application which, in his opinion, would serve the public interest; Mr. Homer Brookshire, Inspector for the Utilities Commission, who testified that over the years he has always found the operation of Transferee to be satisfactory and that, in his opinion, its equipment and

financial backing is such that it would be able to operate, under the authority proposed to be transferred, satisfactorily to the Commission and to the public generally.

In opposition to the proposed transfer, Mr. Jack A. Underdown, Town Commissioner of the Town of Elkin offered testimony from which it appears that he is fearful that any change from Greyhound to another company would result in a deterioration of bus service to Elkin, and of the possibility of the town being left without such service in the event "something physically or financially happens" to Wilkes Transportation Company, Inc., or to its owner. In summary, Mr. Underdown, while not questioning the financial ability of Transferee, stated that his whole interest in the application is the stability of the two bus companies and that he feels that Greyhound offers a greater degree of permanency than Transferee.

Upon consideration of the application, the records of the Commission and the evidence in this case, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That Greyhound Lines, Inc., is a certificated common carrier of passengers, their baggage, mail and light express, and by virtue of authority issued to it by this Commission is the lawful holder of bus franchise rights over the routes involved in this application.

2. That Wilkes Transportation Company, Inc., is a certificated common carrier of passengers, their baggage, mail, and light express, authorized by this Commission to engage in such transportation within Wilkes County and the surrounding area and under a franchise lease agreement with Greyhound, heretofore approved by the Commission, to operate between North Wilkesboro and Winston-Salem.

3. That Greyhound Lines, Inc., as Transferor, and Wilkes Transportation Company, Inc., as Transferee, have entered into a Sales Contract under the terms of which, subject to the approval of the Commission, said Transferor will transfer to said Transferee the bus franchise routes described herein.

4. That Wilkes Transportation Company, Inc., under its present management, has for thirty (30) years provided for the public, in the area of the State in which it operates, an adequate local transportation facility and for the past seventeen (17) years, has operated in a satisfactory manner between North Wilkesboro and Winston-Salem, via Elkin, under a franchise lease agreement with Greyhound Lines, Inc.

5. That the proposed transfer does not in any way affect the operation by Greyhound of its franchise over U.S. Highway 421 between Winston-Salem and the North Carolina-Tennessee State Line, via North Wilkesboro and Boone.

6. That the additional revenue which will be derived by Transferee as a result of the expansion involved in the transfer will tend to strengthen its operation financially and result in an improved service to the traveling public.

7. That Transferee, being a local operator, will be in a better position to provide the type of service needed than Transferor due to the fact that its operation will be more flexible and that schedules can be adjusted to meet the travel needs of the public much more quickly and that Transferee, being located in the area, will be able to provide closer supervision, all to the benefit of the traveling public.

8. That the proposed transfer is in the public interest and will not adversely affect the service to the public.

9. That Wilkes Transportation Company, Inc., is fit, willing, and able to perform such service to the public adequately and on a continuing basis.

10. That said authority is active and has been continuously offered to the public up to the time of the application herein.

Based upon the application, the evidence presented in this case, the records of the Commission, the applicable law and the foregoing findings of fact, the Hearing Examiner makes the following

CONCLUSIONS

The transfer of authority is supported by a large number of well-known and prominent citizens of the area involved. The only opposition expressed was that of the representative from the Town of Elkin and it is evident that his sole concern is that Greyhound may possibly have a greater degree of stability and be less susceptible than Transferee to a financial or other disaster which some day might result in the discontinuance of bus service to Elkin. Such a contention is highly speculative and certainly not persuasive, particularly in view of the preponderance of testimony favorable to Transferee, including the testimony of the witness for the Northwestern Bank to the effect that Transferee is financially healthy.

Wilkes Transportation Company, Inc., has heretofore been unable to acquire interstate rights between Winston-Salem and North Wilkesboro for the reason that its present authority between these points is leased. The acquisition of the rights proposed to be transferred in its own name will, however, make it possible for Transferee to obtain corresponding interstate authority with the end result being a vastly improved service over that presently available.

Upon consideration of all of the evidence presented and the facts found, the Hearing Examiner is of the opinion and

concludes that Applicants have borne the burden of proof required and that the transfer of authority proposed should be granted.

IT IS, THEREFORE, ORDERED That the sale and transfer of the motor passenger franchise routes as particularly described in Exhibit A hereto attached from Greyhound Lines, Inc., to Wilkes Transportation Company, Inc., be, and the same is, hereby approved.

IT IS FURTHER ORDERED That Wilkes Transportation Company, Inc., file with the Commission its time schedule, a tariff of rates and charges covering fares over the routes which it has acquired herein, and otherwise comply with rules and regulations of the Commission.

IT IS FURTHER ORDERED That Transferee advise this Commission in writing when the transfer of authority has been consummated and the date on which operations are to begin.

IT IS FURTHER ORDERED That the transition from Greyhound to Transferee be orderly and coordinated to the end that the change will not result in any inconvenience to the public.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-103
SUB 14

Wilkes Transportation Company, Inc.
P.O. Box 1022,
North Wilkesboro, North Carolina

EXHIBIT A

To transport passengers, baggage, mail and express over the following routes serving all intermediate points:

(a) Over N.C. Highway 67 between Winston-Salem, N.C. and East Bend, N.C. and Booneville, N.C. and Elkin, N.C., and

(b) Over N.C. Highway 268 between Elkin, N.C., Ronda, N.C., Roaring River, N.C., and North Wilkesboro, N.C.

(c) Over N.C. Highway 18 between North Wilkesboro, N.C., Moravian Falls, N.C., Boomer, N.C., Lenoir, N.C., Morganton, N.C. & return.

DOCKET NO. B-275, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition by Carolina Coach Company, Queen City Coach Company, and Greyhound Lines, Inc., for authority to discontinue Board of Directors system at Greensboro Union Bus Station and permit Greyhound Lines, Inc., to operate the station) ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building Raleigh, North Carolina, on March 26, 1968

BEFORE: Chairman Harry T. Westcott and Commissioners John W. McDevitt, M. Alexander Biggs, Jr., Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Petitioners:

J. Ruffin Bailey
Bailey, Dixon and Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Southern Greyhound Lines, Division of Greyhound Lines, Inc.

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina
For: Queen City Coach Company
Fort Bragg Coach Company

Arch T. Allen
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: Carolina Coach Company

ELLER, COMMISSIONER: These proceedings arise on joint petition of Carolina Coach Company, Queen City Coach Company, and Greyhound Lines, Inc., for relief from the Commission's order of April 13, 1965, in Docket No. B-275, Sub 6, so as to permit the carriers to discontinue the Board

of Directors system of governing the operations of the Union Bus Station located in the City of Greensboro, North Carolina, and permit Greyhound Lines, Inc., under appropriate working agreement with all carriers operating into the station, to operate the station, employ and supervise all station employees, and otherwise assume responsibility for the station, its facilities, and administration. Petitioners also seek relief from Rule R2-55(m) so as to erect appropriate signs identifying the carriers operating into the station.

The Commission scheduled and held public hearings on the petition. There were no protests or other interventions in the proceedings.

From the evidence adduced, we make the following

FINDINGS OF FACT

1. Petitioners, and each of them, are duly authorized motor carriers of passengers and operate into and out of the union bus station located in the City of Greensboro, North Carolina. The North Carolina Utilities Commission has jurisdiction over Petitioners' operations and the operations of the Greensboro Union Bus Station.

2. The bus station aforesaid has been operated as a union station for many years, with Petitioners and Safety Transit Lines operating into it. The Commission issued an order dated April 13, 1965, in Docket No. B-275, Sub 6, requiring that a Board of Directors consisting of one member from each carrier operating into the station be established, that by-laws be adopted and observed, and that no employee of the station; i.e., the Board of Directors, at the same time be an employee of a carrier operating into the station.

3. Prior to the Commission's order aforesaid, the station had been operated by Greyhound Lines, Inc., under working agreement with the other carriers. The working agreement expired and the parties were unable to agree, either on the terms of renewal or on operating terms pending renewal. This failure to agree was one of the causes of the proceedings and the Commission's order of April 13, 1965. Further, prior to said order, Greyhound had employed all station employees, who were organized and worked under a system-wide labor contract.

4. When the requirements of the Commission's order were placed into effect labor problems developed between the station employees and the Board of Directors at Greensboro. After organization and litigation, it became apparent that the Board of Directors would be required to accord station personnel all rights, privileges, and benefits previously assured these employees under Greyhound's labor contract. According these rights and benefits to the station employees (particularly to building up pension funds to the level already accumulated in the Greyhound system) at Greensboro,

resulted in greatly increased and concentrated expenses of station operation at Greensboro and resulted in assessments against operating carriers which render the Board of Directors system at Greensboro uneconomic compared with costs when Greyhound operated the station and spread the accumulation of such benefits as pension funds over a number of years.

5. In addition to the foregoing economies to be realized by Greyhound's resumption of operation of the Greensboro station, administrative economies can be realized from centralized bookkeeping, accounting, and purchasing.

6. In addition to establishing a basis for operation of the station in the absence of any agreement among the carriers, the requirements of the Commission's order were intended to assure fair and impartial treatment and full representation of all carriers in the operating affairs of the station, and to promote harmony among the carriers operating through the station. These objectives of the order have been only partially achieved. In particular, disharmony and contentiousness among the carriers appears to have increased under the required Board of Directors and voting procedures.

7. All carriers operating into the Greensboro station, including Safety Transit Lines, have now voluntarily executed a new operating agreement under which the rights and duties of all parties are clearly defined. For all practical purposes, the contract now agreed upon is the same as the long-standing agreement which had expired and upon which the parties could no longer agree at the time of the Commission's order.

8. Among those things now agreed upon which could not previously be agreed upon is that prominent signs may be placed on the union station building identifying the two competing systems, Trailways and Greyhound.

CONCLUSIONS

1. The voluntary operating agreement filed in this docket by carriers operating into the Greensboro Union Bus Station forms a reasonable basis for the operation and maintenance of said station.

2. We are of the opinion that to permit relief from the Commission's order of April 13, 1965, to the extent the competing carriers may by agreement among themselves return to the previous method of operating the union bus station would be in the interests of the carriers financially, will tend to encourage and promote harmony among them, will best serve the interests of the station employees, will be in the best interests of the traveling public generally, and will tend to preserve the union bus station concept at Greensboro.

Accordingly, IT IS ORDERED:

1. That the petition in this docket be, and it is hereby, approved.

2. That the operating and lease agreement filed in this docket as Applicant's Exhibit No. 1 on April 16, 1968, be, and the same is hereby, approved to become effective on June 1, 1968, or at such later time as Petitioners may request and obtain approval.

3. That Petitioners and Safety Transit Lines be, and they are hereby, relieved of the requirements of the Commission's order of April 13, 1965, insofar as necessary and appropriate to effectuate the approval herein granted.

4. That the provisions of Commission Rule R-255(m) are hereby waived for the Union Bus Station at Greensboro to the extent that the carriers operating into said station are hereby permitted to erect appropriate agreed signs identifying the carriers operating into said station.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-69, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Queen City Coach Company - Proposed discontinuance of 5:00 p.m. schedule from Charlotte to Wingate, via Matthews, Indian Trail, and Monroe, and the 6:45 a.m. schedule from Wingate to Charlotte over the same route	RECOMMENDED ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, February 21, 1968, at 2:00 p.m.

BEFORE: E.A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

R.C, Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina

No Protestants.

Hughes EXAMINER: This matter arises from a proposed revision by Queen City Coach Company of its time schedules through the filing of N.C.U.C. Schedule No. 882 which would have the effect of eliminating the 5:00 p.m. trip from Charlotte, via Indian Trail to Monroe and Wingate and the 6:45 a.m. trip from Wingate to Charlotte over the same route. The schedule revision was filed with the Commission on December 18, 1967, showing an effective date of January 8, 1968.

Letters protesting the proposed change in service were received from Mrs. M.W. Wood, of Monroe, and from Mrs. P.G. Mangum, Mrs. Clara W. Murphy and Mrs. Wanona W. Arant, all of Matthews. Pursuant thereto, the proposed schedule change was suspended by the Commission.

At the request of Queen City Coach Company, the matter was set for hearing at this time and place and notice thereof given to all protesting parties. Although the notice of hearing was mailed to protestants on or about January 9, 1968, none of said protestants have communicated with the Commission further nor was anyone present at the hearing in opposition to the proposed change.

The evidence tends to show that Queen City Coach Company presently has ten (10) trips from Monroe to Charlotte and twelve (12) trips from Charlotte to Monroe in addition to other service between Wingate and Charlotte; that passenger revenue for the schedule, which Applicant proposes to discontinue, during the year 1967 was $.1728 per mile, whereas, cost per mile for 1967 was $.5014; that said schedule earned in passenger revenue $3,623.76 for the year 1967, whereas, the cost of operation was $10,514.39, resulting in a loss to the company in the amount of $6,890.63, that there is another schedule leaving Monroe for Charlotte at 6:35, only twenty minutes ahead of the schedule which Applicant proposes to eliminate and that if the 5:00 p.m. trip from Charlotte is eliminated, a bus which presently leaves Charlotte at 6:30 will be rerouted via Matthews and Indian Trail.

Upon consideration of the records of the Commission and of the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That Queen City Coach Company is a certificated common carrier of passengers by motor bus under certificate of public convenience and necessity issued to it by this service between Charlotte and Wingate, via Waxhaw, Matthews, Indian Trail and Monroe.

2. That the elimination of the schedules proposed will still leave nine (9) trips from Monroe to Charlotte and

eleven (11) trips from Charlotte to Monroe. only one of said trips operates in each direction via Waxhaw and the proposed discontinuance does not contemplate any change in the service which Waxhaw is now receiving.

3. That only four (4) persons have indicated any opposition to the proposed change, one of which resides in Monroe and the other three at Matthews. None of said protestants were present at the hearing or showed any interest in the matter other than the original letters, heretofore referred to.

4. That the operation of the schedules which Applicant proposes to discontinue resulted in a loss in the amount of $6,890.63 during the year 1967.

5. That public convenience and necessity no longer justifies the schedules which Applicant proposed to discontinue and that to require the continuance of said schedules would result in undue and unreasonable financial burden upon Applicant in light of the lack of public need and demand for said service as revealed by the record.

CONCLUSIONS

The Commission is reluctant to permit the discontinuance of any service which would result in substantial inconvenience to the public. In this case, however, only four (4) persons have objected to the proposed change and none of them were sufficiently interested to appear at the hearing for the purpose of stating their views for the record.

If the relief sought by Applicant was complete abandonment of service between the involved points, the fact that Applicant is losing money would be of little significance especially if a large number of people would be inconvenienced. In this case, however, Applicant only proposes to discontinue two (2) schedules which the public is not using in sufficient number to justify their continued operation and there will still be an abundance of service between Charlotte and Monroe, via Indian Trail and Matthews.

The Hearing Examiner concludes that N.C.U.C. Schedule No. 882 which reflects a discontinuance of the involved trips should be approved with the understanding that the 6:30 p.m. departure from Charlotte to Monroe will be rerouted via Indian Trail and Matthews.

IT IS, THEREFORE, ORDERED That Queen City Coach Company be, and the same is, hereby authorized to discontinue its 5:00 p.m. daily except Sundays schedule from Charlotte to Wingate, via Matthews, Indian Trail to Monroe, and its 6:45 a.m. schedule from Wingate to Charlotte over the same route, effective ten (10) days from the date that this order becomes final.

IT IS FURTHER ORDERED That concurrently with such discontinuance, carrier reroute via Matthews and Indian Trail its 6:30 p.m. departure from Charlotte to Monroe and that a new schedule reflecting the changes authorized herein be filed with the Commission and notice thereof given to the public by posting same at bus stations and at bus stops along the involved route.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-|4|3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of R. C. Gregory, 5|| Church) RECOMMENDED
Street, Lafayette, Tennessee 37083) ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on January 3|, |968, at |0 a.m.

BEFORE: Chairman Harry T. Westcott

APPEARANCES:

For the Applicant: None

For the Protestants:

Kenneth Wooten, Jr.
Bailey, Dixon and Wooten
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
For: Burton Lines, Inc.
Forbes Transfer Company, Inc.
Vance Trucking Company, Incorporated
Epes Transport System
Cargocare Transportation Company, Inc.
North State Motor Lines, Inc.

WESTCOTT, CHAIRMAN: By application filed November |5, |967, the above-captioned applicant seeks authority to transport Group |9, Unmanufactured Tobacco and Accessories, as set forth in the commodity description in the rules and regulations of the Commission, between all points and places in North Carolina. Notice to the public was given in a Calendar of Hearings issued by the Commission on November |5, |967.

At the call of the case for hearing, applicant failed to appear to prosecute his application, and no one was present to offer evidence in support thereof.

Attorney for protestant carriers, as shown in the caption, and witnesses of protesting carriers were present. Upon failure of the applicant to appear, attorney for protestants lodged a motion to dismiss the application, which motion was considered and granted by the Hearing Commissioner for the reasons hereinabove set forth.

WHEREFORE, IT IS ORDERED That the applicant having failed to appear, the application in Docket No. T-|4|3 be, and the same is hereby, dismissed and denied.

IT IS FURTHER ORDERED That a copy of this order be transmitted to the applicant and to the attorney for protestants.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-380, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Tidewater Transit Co., Inc., 114 North Queen Street, Kinston, North Carolina - Authority to transport Liquid Fertilizer and Liquid Fertilizer Materials, in Bulk, in Tank Trucks) ORDER DENYING APPLICATION

HEARD IN: Hearing Room of the Commission, Raleigh, North Carolina on October 19, 1967, and January 16, 1968

BEFORE: Commissioners John W. McDevitt, Presiding, Thomas R. Eller and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Protestants:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: A. P. Comer Transport Service, Inc.
Central Transport, Incorporated

James B. Wolfe, Jr.
Cannon, Wolfe & Coggin
Attorneys at Law
108 Commerce Place
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc. Lessee of Ryder Tank Line, a Division of Ryder Truck Lines, Inc.

J. Melville Broughton and
John D. McConnell, Jr.
Broughton & Broughton
Attorneys at Law
P. O. Box 2715, Raleigh, North Carolina
For: Bulk Haulers, Inc.

McDEVITT, COMMISSIONER: Tidewater Transit Company, Inc. (Applicant), 114 N. Queen Street, Kinston, North Carolina, filed application on August 17, 1967, to extend authority which it holds under Certificate No. C-317 to provide for the transportation of liquid fertilizer and liquid fertilizer materials, in bulk, in tank trucks, from Wilmington, Fayetteville and Wilson to points in North Carolina west of the Counties of Mecklenburg, Cabarrus, Rowan, Davidson, Guilford and Rockingham with return of refused and rejected shipments.

Public Hearing was scheduled and held as captioned. Protests and Motions to Intervene were filed by Chemical Leaman Tank Lines, Inc., Bulk Haulers, Inc., Central Transport, Inc., and A. F. Comer Transport Service, Inc. Applicant and Protestants were present through company representatives and were represented by counsel. Applicant offered testimony tending to show ownership of equipment adaptable to and available for transportation of liquid fertilizer and fertilizer materials and financial ability. Testimony was also offered to show that Applicant has for several years conducted operations under authority granted by the North Carolina Utilities Commission, has experienced personnel and is ready and willing to provide the proposed service.

Two public witnesses representing manufacturers of the products to be transported were offered by the Applicant. Witness Bruce N. Maney, representing Armour & Company, testified that his company has facilities in Wilmington, Fayetteville and Conway, North Carolina, from which it distributes its products to 75 distributors located in North Carolina, 4 of which are located in the territory for which Applicant seeks authority; that these 4 distributors handle approximately 10% of Armour's business within North Carolina; that the demand for the product is increasing and Armour hopes to improve its business and service through use of a new warehouse facility at Fayetteville; that the proposed service would be a convenience to Armour; that Armour intends to move 1,000 tons of the subject product from Wilson, 4,000 tons from Wilmington and 10,000 tons from the new storage facility at Fayetteville between January and July; that he was not prepared to say that existing carriers will not continue to have satisfactory service next season even with the new shipping point at Fayetteville; that Armour does not have facilities at Wilson and that its products are shipped from Carolina Nitrogen in Wilmington; that Armour's need is for additional equipment and not for additional carriers.

Applicant's second public witness, W. Harry Sikes, Traffic Manager for Carolina Nitrogen Corporation in Wilmington, N.C., testified that there was no shortage of equipment during the 1967 season; that he anticipates a shortage in 1968 because of pricing arrangements and increased business; that Carolina Nitrogen stores 5,000 tons of the subject product at Elmwood near Statesville, N. C., and beginning in 1968 will store 5,000 tons at Fayetteville; that establishment of the terminal will necessitate services of an additional carrier; that Carolina ships to five points in western North Carolina from its plant in Wilmington; that in 1967 Carolina had five shipments to Hendersonville and fewer to other areas and had no difficulty getting transportation to these points; that Carolina did not experience a shortage of equipment in 1967; that Carolina will store its product in the River Terminal at Fayetteville which is owned by Mr. Felix Harvey, who is also the principal owner of Applicant Tidewater Transit Company, Inc.; that several carriers have authority to provide the proposed transportation service from Fayetteville to the territory sought, including Central Transport, Ryder Tank Line, A. F. Comer Transport Service, Inc., Maybelle Transport Service, Petroleum Transit and Public Transport; that he has not contacted Central, Ryder or Maybelle as to availability of service; that Carolina would need five units to handle its products from Fayetteville; that Carolina has been assured by Bulk Haulers that they can haul anything they have; that Carolina has no need for service from Wilson; that Carolina will not support the pending application of H. & P. Transit Company for the same authority; that Carolina is basing its support on need for five units to handle its transportation service from River Terminal at Fayetteville.

Protestants A. F. Comer Transport Service, Central Transport, Chemical Leaman Tank Lines, Inc., and Bulk Haulers, Inc., offered testimony tending to show that they are certificated to perform the proposed transportation service; that they have the necessary equipment and personnel to perform the proposed service; that their equipment has not been fully utilized by Carolina Nitrogen and Armour & Company; that they are ready and willing to provide the proposed service and that the certification of an additional carrier would deprive them of needed business and revenue. Witness Lee Shaffer representing Protestant A.F. Comer Transport Service, Inc., testified that his company placed six units at Carolina Nitrogen's disposal for six to eight weeks during the 1967 season during which they hauled a total of 89 loads; that his equipment and drivers were idle a considerable amount of the time and that his company lost money on its operations; that for a 13-day period in 1967, between May 8th and June 15th they were not rendered a single shipment. Protestant Witness J. C. Thompson, representing Central Transport, testified that his company holds authority for the transportation of liquid commodities in bulk, in tank trucks, between all points and places in North Carolina; that it has 50 trailers suitable and available for transporting liquid fertilizer; that

Central has solicited Carolina Nitrogen but that they have not been called upon to provide transportation service for this commodity.

Protestant Witness Joe C. Day, representing Chemical Leaman Tank Lines, Inc., testified that Chemical Leaman has 397 tractors and 403 trailers and maintains three shipping terminals in North Carolina at Charlotte, Fayetteville and Greensboro, that Chemical Leaman has the authority sought in this application, that Chemical Leaman has solicited both Carolina Nitrogen and Armour and is ready, willing and able to furnish transportation services for liquid fertilizer and fertilizer materials.

Protestant Witness Julian Taylor, III, representing Bulk Haulers, Inc., testified that Bulk Haulers handled 62.5% of Carolina Nitrogen's total truck movement in liquid nitrogen solution in the year 1966, that Bulk Haulers experienced a decrease of $48,000 in revenue in 1967 over the previous year, that Bulk Haulers furnished Carolina Nitrogen 34 tractor-trailer units for use in 1967, that Bulk Haulers has the necessary equipment and is ready and willing to provide the proposed service, that Carolina Nitrogen has not requested service for the year 1968, but that Bulk Haulers has solicited them.

Based on the testimony and relevant records of the Commission we make the following

FINDINGS OF FACT

1. Applicant is fit, willing and able to render service in the additional territory applied for and has a number of pieces of equipment available for the transportation of liquid fertilizer and liquid fertilizer in bulk in tank trucks and is presently engaged in transporting such commodities in eastern North Carolina between all points and places east of the counties of Mecklenburg, Cabarrus, Rowan, Davidson, Guilford and Rockingham.

2. The use of liquid fertilizer and liquid fertilizer materials transported in bulk in tank trucks is a highly seasonable transportation movement and for the most part is used in direct fertilizer application to growing crops and during 1967 was transported primarily during a peak period from April through June.

3. The Protestants have been duly certified and authorized by this Commission to transport commodities including liquid fertilizer and fertilizer materials in bulk in tank trucks and are advertent to the seasonable use of this product and have invested considerable amounts in the acquisition of tractors and tank trailers in order to meet the shipping needs of the public at all times in the shipment of liquid fertilizer in bulk.

4. One of the shipper witnesses supporting the Applicant is Carolina Nitrogen Corporation, with its principal plant and shipping point in Wilmington, N. C., and an additional bulk storage shipping point at Elmwood, N. C., and a proposed shipping point for 1968 at Fayetteville, N. C. This shipper has been in operation in North Carolina since 1961 and has used the services of all of the Protestants for shipments throughout the State and has used the service of the Applicant for shipments within the Applicant's scope of operations in eastern North Carolina. This shipper has not experienced significant difficulty in securing adequate service from the existing authorized carriers, and bases its main support of the Applicant on the shipper's desire to have unlimited authorized common carriers available. The principal stockholder of the Applicant is a large consumer of the products of this shipper through ownership in fertilizer and chemical companies and has an ownership interest in the storage facility to be leased by the shipper in Fayetteville, N. C. The other shipper witness, for Armour & Company, had substantially the same experience at its terminals.

5. The Protestant A. F. Comer Transport, Inc., during the peak season 1967 placed six tractor trailers in Wilmington for shipments for Carolina Nitrogen from May 8, 1967, to June 15, 1967, and received only 89 shipments during the period, or substantially less than full utilization of the equipment available to the shipper. The Protestant Bulk Haulers, Inc., of Wilmington has transported the majority of Carolina Nitrogen shipments for several years and has made arrangements for ample equipment for this movement and during 1967 the equipment was not fully utilized.

6. The Protestants, together with Applicant, within its present scope of operations are ready, willing and able to transport all of the shipping requirements of the known liquid fertilizer movements in bulk in tank trucks in North Carolina.

7. The needs of the public are being reasonably met and provided for through the services of the presently certificated carriers authorized to deliver liquid fertilizer and liquid fertilizer solutions in bulk in tank trucks.

8. Applicant has failed to establish by competent, material and substantial testimony that public need exists for the transportation authority requested in addition to presently existing and authorized common carrier service.

CONCLUSIONS

North Carolina General Statutes 62-262(e) places the burden of proof upon the Applicant to show to the satisfaction of the Commission in the instance of an application for a certificate:

"(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) That the Applicant is fit, willing and able to perform the proposed service, and

(3) That the Applicant is solvent and financially able to furnish adequate service on a continuing basis."

The evidence in this case does not indicate to the Commission a public demand and need for the proposed service in addition to existing authorized transportation service. In Utilities Commission v. Truck Company, 223 N. C. at p. 690, the Court, with respect to the showing and determination of public convenience and necessity, declared:

"It is to be remembered that what constitutes 'public convenience and necessity' is primarily an administrative question with a number of imponderables to be taken into consideration, e.g., whether there is a substantial public need for the service; whether the existing carriers can reasonably meet this need, and whether it would endanger or impair the operations of existing carriers contrary to the public interest. Precisely for this reason its determination by the Utilities Commission is made not simply prima facie evidence of its validity, but 'prima facie just and reasonable.'"

The record clearly establishes that the several certificated Protestants have an abundance of equipment and are ready, willing and able to provide the proposed service. On the other hand, the Applicant's public witnesses from Carolina Nitrogen and Armour and Company, manufacturers and distributors of the commodity for which authority is sought, base their support of the application primarily upon the desirability of maximum availability of transportation service, an estimated increase of about 15% to 20% in the volume of traffic of this commodity, and an additional storage facility at Fayetteville. The testimony reveals that Carolina Nitrogen has been highly selective in its use of carriers, has not utilized all of the existing authorized carriers, and has entered into an agreement with President C. Felix Harvey who is also the owner of River Terminal in Fayetteville for the storage of the commodity in the River Terminal warehouse. It is evident that granting of the proposed authority would be conducive to the convenience and the business relationships of Tidewater and Carolina Nitrogen, but this is primarily a private rather than a public desire or need. There was not a public witness from the area to be served under the proposed authority. The business of both Armour and Carolina Nitrogen within the territory to be served constitutes a minor part of the shipping from the origin points named in the application. We conclude, therefore, that Applicant has failed to carry the burden of proof as required by the statute and that he has not shown himself entitled to a certificate of public

convenience and necessity and that the application should, therefore, be denied.

IT IS, THEREFORE, ORDERED that the application filed in this docket be and the same is hereby disapproved and the proceeding dismissed and terminated.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-380, SUB 13

Tidewater Transit Co., Inc.

BIGGS, COMMISSIONER, DISSENTING: Tidewater Transit Co., Inc., is now authorized to transport liquid fertilizer and liquid fertilizer products between all points and places in 67 counties of the State. The westernmost 33 counties are not included in its authorized territory. By its application in this docket, said company seeks to enlarge its authority to include the right to haul such commodities between all points and places in the State. The evidence presented at the hearing indicates that shipments of such products in this State now originate at certain points in eastern North Carolina that are within applicant's existing territory; and, as a practical matter, the main question now presented is whether applicant should be permitted to transport shipments of such products originating within its present territory to points and places in the western 33 counties of the State not now included in its territory. I feel that such permission should be given.

In addition to the testimony and evidence outlined in the majority opinion, there was evidence tending to show that in some instances shipments of liquid fertilizer originally consigned to points within applicant's present territory are reconsigned after carriage is begun to points lying outside applicant's territory, in which case the applicant is required to either lease its unit to an authorized carrier when it reaches the boundary of its territory, or to transfer its load to the vehicle of such other carrier. The evidence further indicated a growing use of liquid fertilizer in the farming areas of western North Carolina, and of increased shipments of such product from the eastern terminal points to said areas.

The evidence further described situations where the trucks of carriers authorized to transport throughout the State would be involved in transporting loads to points within the applicant's territory, while the applicant's equipment could not be used because other loads were to points outside its territory.

The transportation of liquid fertilizer and liquid fertilizer products is a seasonal matter; and when the season for transporting such commodities is in, the carriers are required to dedicate equipment to the exclusive use of said shippers in order to obtain loads from them. The dedicated equipment of one carrier is just as valuable, both from the standpoint of its utilization and ownership, as other equipment so dedicated, and I consider that public convenience and need and the ends of justice require that each piece of such dedicated equipment have an operating equality.

In making my judgment in this matter, I do not rely exclusively upon the testimony of the shipper representatives, because I do not feel that such representatives should determine which carriers shall be authorized by the granting or withholding of their support to applications for authority. I consider that since all intrastate shipments of the products in question originate in applicant's present territory and the practical consideration is that of extending its destination authority, and since the shippers require the carriers to dedicate equipment for such transportation during the season, there is ample justification for granting applicant's request.

M. Alexander Biggs, Jr., Commissioner

DOCKET NO. T-385, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Failure of Edward Clyde Lilly, t/a E. C. Lilly, Box 274, Star, North Carolina, to keep appropriate insurance on file	) ORDER REVOKING CERTIFICATE

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on January 26, 1968, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Clawson L. Williams, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Respondent:

Neither present nor represented by counsel

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carclina

BY THE COMMISSION: On July 10, 1967, the Commission issued an order suspending the operating authority of Edward Clyde Lilly, t/a E. C. Lilly (Respondent), Box 274, Star, North Carolina, by reason of his failure to keep appropriate insurance on file with the Commission as required by G.S. 62-268. Said order further required said Respondent to appear before the Utilities Commission, Old YMCA Building, corner of Edenton and Wilmington Streets, Raleigh, North Carolina, at 10:00 o'clock a.m., on Friday, January 26, 1968, and show cause, if any he had, why his operating authority should not be revoked for willful failure to maintain appropriate security for the protection of the public as required by G. S. 62-268. Said order was personally served on Edward Clyde Lilly on August 24, 1967.

Pursuant to the provisions of said order, the matter came on for hearing for the purpose set out therein on January 26, 1968, when and where the respondent was not present, nor was anyone present in his behalf. A representative of the Motor Transportation Department of the Commission testified as to what the Department's files disclosed in regard to the insurance records of Respondent.

Based upon the pertinent records of the Commission, of which it takes judicial notice, the respondent's file and the competent evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That pursuant to the provisions of an order in this docket under date of October 7, 1966, the respondent is the holder of Certificate No. C-348 in which he is authorized to transport, as an irregular route common carrier, certain specified commodities between certain points and places in the State of North Carolina.

2. That the Department of Motor Transportation of the Commission is the custodian of the motor carrier insurance records of the Commission, including the records of Respondent's insurance; that the Commission was notified on May 12, 1967, that the liability insurance of Respondent would be cancelled, effective June 12, 1967; that the Director of the Department of Transportation of the Commission notified the respondent of said cancellation by letter dated May 12, 1967, with carbon copy to Respondent's insurance agent; that nothing having been done to keep said insurance in force, a show cause order was issued July 10, 1967, suspending the operating authority of Respondent and directing Respondent to appear in the offices of the Commission at captioned time and place and show cause, if any he had, why his authority should not be cancelled by reason of his failure to keep insurance in force as required by law, and that said order was served on Respondent by an inspector of the Commission on August 24, 1967.

3. That at the hearing on January 26, 1968, Respondent did not appear, nor did anyone appear in his behalf and that as of the date of the hearing, Respondent did not have on file with the Commission evidence of appropriate liability security for the protection of the public as required by G.S. 62-268.

Based on the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

G.S. 62-268 provides:

"Security for protection of public. - No certificate, permit or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Commission such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require."

Under the aforesaid findings and the applicable law, the Commission concludes that Respondent has willfully failed to comply with G.S. 62-268 and that Certificate No. C-348, heretofore issued to Respondent, should be cancelled and revoked.

IT IS, THEREFORE, ORDERED That Certificate No. C-348, heretofore issued to Edward Clyde Lilly, t/a E. C. Lilly, Box 274, Star, North Carolina, be, and the same is, hereby revoked and cancelled.

IT IS FURTHER ORDERED That a copy of this order be transmitted to said Respondent and a copy sent to the North Carolina Department of Motor Vehicles.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-657, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Failure of Zeb West Trucking Line, Inc., Route 2, Dover, North Carolina, to keep liability insurance on file	) ORDER) REVOKING) CERTIFICATE

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, Friday, December 6, 1968, at 12:50 p.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners Thomas R. Eller, Jr., John W. McDevitt, M. Alexander Biggs, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Respondent:

Neither present, nor represented by counsel

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

BY THE COMMISSION: On October 2, 1968, the Commission issued an order suspending the operating authority of Zeb West Trucking Line, Inc., Route 2, Dover, North Carolina, by reason of its failure to keep appropriate insurance on file with the Commission as required by G.S. 62-268. Said order further required Respondent to appear before the Commission at 10:00 o'clock A. M., Friday, December 6, 1968, and show cause, if any it had, why its operating authority should not be revoked for willful failure to maintain appropriate security for the protection of the public as required by G.S. 62-268. Said order was personally served on Mr. Zeb West, President of Zeb West Trucking Line, Inc., on October 4, 1968.

Pursuant to the provisions of said order, the matter came on for hearing for the purpose set out therein on December 6, 1968, when and where the Respondent was not present, nor was anyone present in its behalf. A representative of the Commission's Department of Motor Transportation testified at the hearing as to what the Department's files disclosed in regard to the insurance records of Respondent.

Based upon the pertinent records of the Commission, of which it takes judicial notice, the respondent's file and the competent evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That pursuant to the provisions of an order in this docket, under date of October 18, 1963, the respondent is the holder of Certificate No. C-512 in which it is authorized to transport, as an irregular route common carrier, household goods and certain other specified commodities between certain points and places in the State of North Carolina.

2. That the Department of Motor Transportation of the Commission is the custodian of the motor carrier insurance records of the Commission, including the records of

Respondent's insurance; that the Commission was notified on August 22, 1968, that the liability insurance of Respondent would be cancelled effective September 21, 1968; that the Director of the Department of Motor Transportation of the Commission notified the respondent of said cancellation by letter dated August 22, 1968, with carbon copy to Respondent's insurance agent and that evidence of insurance not having been filed on or before the date of cancellation, a second letter was directed to Respondent advising it that unless proper evidence of insurance was on file with the Commission on or before September 30, 1968, an order to show cause would be issued; that nothing having been done to keep said insurance in force, a show cause order was issued on October 2, 1968, suspending the operating authority of Respondent and directing Respondent to appear in the offices of the Commission on December 6, 1968, and show cause, if any it had, why its authority should not be cancelled by reason of its failure to keep insurance in force as required by law, and that said order was served on Respondent by an inspector on October 4, 1968.

3. That at the hearing on December 6, 1968, Respondent did not appear, nor did anyone appear in its behalf and that as of the date of the hearing, Respondent did not have on file with the Commission evidence of appropriate liability for security for the protection of the public as required by G.S. 62-268.

Based on the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

G.S. 62-268 provides:

"Security for protection of public. - No certificate, permit or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Commission such security bond, insurance of self-insurance for the protection of the public as the Commission shall by regulation require."

Under the aforesaid findings and the applicable law, the Commission concludes that Respondent has willfully failed to comply with G.S. 62-268 and that Certificate No. C-512, heretofore issued to Respondent, should be cancelled and revoked.

IT IS, THEREFORE, ORDERED That Certificate No. C-512, heretofore issued to Zeb West Trucking Line, Inc., Route 2, Dover, North Carolina, be, and the same is, hereby revoked and cancelled.

IT IS FURTHER ORDERED That a copy of this order be transmitted to said Respondent and a copy sent to the North Carolina Department of Motor Vehicles.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-340, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Disher Transfer & Storage Co., P. O. Box 5401, Winston-Salem, North Carolina	) ORDER APPROVING) CHANGE IN) CORPORATE NAME

Upon consideration of petition duly filed:

It appearing, That a certificate has previously been issued by the Commission to the above-named carrier; that the corporate name of said carrier has been changed to The Disher Company, as of January 22, 1968, and that said carrier has duly petitioned this Commission to amend its records to reflect the change in corporate name;

It further appearing, That the change of corporate name requested does not involve a change in the ownership, management, or control of the operating rights of said carrier; therefore,

It is ordered, That the Commission's records be, and they are hereby, amended to reflect carrier's corporate name as THE DISHER COMPANY

It is further ordered, That petitioner file certificates of the required insurance, tariffs of rates and charges, lists of equipment, and designation of process agent in the new corporate name, and otherwise comply with the rules and regulations of the Commission within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. T-249, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
G. & H. Transit Company, Incorporated, 2216 Freedom Drive, Charlotte, North Carolina	) ORDER APPROVING) CHANGE IN) CORPORATE NAME

Upon consideration of petition duly filed:

It appearing, That a certificate has previously been issued by the Commission to the above-named carrier; that the corporate name of said carrier has been changed to R. H. Garland & Company, Inc., as of September 3, 1968, and that said carrier has duly petitioned this Commission to amend its records to reflect the change in corporate name;

It further appearing, That the change of corporate name requested does not involve a change in the ownership, management or control of the operating rights of said carrier; therefore,

It is ordered, That the Commission's records be, and they are, hereby amended to reflect carrier's corporate name as R. H. GARLAND & COMPANY, INC.

It is further ordered, That petitioner file certificates of the required insurance, tariffs of rates and charges, lists of equipment, and designation of process agent in the new corporate name, and otherwise comply with the rules and regulations of the Commission within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-927, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Case Van Lines, Inc., P.O. Box 2103, Huntington, West Virginia	) ORDER APPROVING) CHANGE IN) CORPORATE NAME

Upon consideration of the record in the above entitled matter and of letter advising the Commission that the corporate name of Case Van Lines, Inc., has been changed to Heritage Van Lines, Inc., and requesting that this Commission's records be amended accordingly; and good cause appearing therefor,

IT IS ORDERED That the Commission's records be, and they are hereby amended to reflect Petitioner's corporate name as HERITAGE VAN LINES, INC.

IT IS FURTHER ORDERED That Petitioner file evidence of insurance, tariff of rates and charges, lists of equipment, designation of process agent in the new corporate name and otherwise comply with the rules and regulations of the Commission within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of January, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1427

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Neptune World-Wide Moving of North Carolina, Inc., d/b/a Neptune World-Wide Moving Corporation, Durham, North Carolina) ORDER APPROVING CHANGE IN TRADE NAME

Upon consideration of Motion duly filed:

It appearing, That authority has been previously issued to the above named carrier in this proceeding; that the trade designation of said carrier has been changed to Neptune World-Wide Moving and that the said carrier has duly filed a Motion with this Commission to amend its records to reflect the change in trade name;

It further appearing, That the change in trade name requested does not involve a change in the ownership, management, or control of the operating rights of said carrier; therefore,

It is ordered, That the Commission's records be, and they are, hereby amended to reflect carrier's name and trade name as NEPTUNE WORLD-WIDE MOVING OF NORTH CAROLINA, INC., d/b/a NEPTUNE WORLD-WIDE MOVING

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk
(SEAL)

DOCKET NO. T-920, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of J. R. Corporation, 1200 National Drive, Winston-Salem, North Carolina	) ORDER APPROVING) CHANGE IN) CORPORATE NAME

Upon consideration of petition duly filed:

It appearing, That authority has previously been issued by the Commission to the above-named carrier; that the corporate name of said carrier has been changed to Winston Movers, Inc., as of June 26, 1968, and that said carrier has duly petitioned this Commission to amend its records to reflect the change in corporate name;

It further appearing, That the change of corporate name requested does not involve a change in the ownership, management, or control of the operating rights of said carrier; therefore,

It is ordered, That the Commission's records be, and they are, hereby amended to reflect carrier's corporate name as WINSTON MOVERS, INC.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1415

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Joe R. Brawley, d/b/a Brawley Transportation Company, 944C Davie Avenue, Statesville, North Carolina, for contract carrier permit	) ORDER)

HEARD IN: The Hearing Room of the Utilities Commission, Raleigh, North Carolina, on February 13, 1968, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott, Commissioners Thomas R. Eller, Jr., and John W. McDevitt, presiding

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon and Wooten

Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

No Protestants.

McDEVITT, COMMISSIONER: Joe R. Brawley, d/b/a Brawley Transportation Company (Applicant), filed application on November 29, 1967, for authority to operate as a contract carrier under individual written contract with each shipper to be served, transporting the following commodities to and from various points and places throughout the State of North Carolina.

Group 6, Agricultural Commodities

Group 7, Cotton in Bales

Group 8, Dry Fertilizer and Fertilizer Materials

Group 21, Thermoplastic Materials and compounds, Thermoplastic products, equipment, materials and supplies used in the fabrication of wooden bins, materials used in the manufacture of thermoplastic materials, compounds, and products.

The application was scheduled for hearing and notice given in the Calendar of Hearings issued December 6, 1967. No protests or motions to intervene were filed. Hearing was held as captioned with Applicant and Counsel present.

Testimony of Applicant Joe R. Brawley and statements of counsel revealed that Applicant had not entered into written contracts with shippers for transportation of Group 6, Agricultural commodities; Group 7, Cotton in Bales; Group 8; Dry Fertilizer and Fertilizer Materials, and no competent evidence was offered as to public need and demand for the proposed service. On motion of counsel the application was amended to delete Groups 6, 7 and 8, leaving for consideration the following authority.

Group 21, Thermoplastic Materials and compounds, thermoplastic products, equipment, materials and supplies used in the fabrication of wooden bins, frames, materials, supplies and all parts used in the manufacture of thermoplastic materials, compounds and products, from the Plant of Fusion Rubbermaid Corporation, Statesville, North Carolina, to its plant in Statesville, North Carolina, to and between Jobbers of affiliated plants in North Carolina.

Testimony and exhibits of Joe R. Brawley indicate that Applicant operates Brawley Transportation Company as an individual; that applicant owns six van type trucks having carrying capacity of 17 tons, and valued at $85,948; that applicant has total assets of $142,583, total liabilities of

$75,402, and net worth of $67,181; that Applicant has several years of successful experience in the supervision and management of his trucking business.

The application is supported by Fusion Rubbermaid Corporation which desires to discontinue private carrier truck operation and utilize the services of Applicant as a contract carrier.

Applicant has leased equipment to Fusion Rubbermaid Corporation since January, 1966, because of Rubbermaid's difficulties in obtaining expedited service and reliable handling from common carriers. Rubbermaid's thermoplastic products are chiefly industrial containers, incapable of nesting in transportation and having density of only three to six pounds per cubic foot. Approximately 800,000 pounds per year move outbound in less than truckload lots, the remainder in truckloads. Loading is directly from the production line to transportation vehicles. Standby vehicles are required seven days per week, day and night. Low density of the products, handling and delivery requirements make the traffic unattractive to common carriers.

Applicant and Rubbermaid have entered into a contract dated November 3, 1967, whereby Applicant will furnish the proposed service as a contract carrier in intrastate commerce at rates and under conditions subject to the approval of the North Carolina Utilities Commission.

FINDINGS OF FACT

1. The proposed operation conforms with the definition of a contract carrier as set forth in Public Utilities Act, G.S. 62-3.

2. The proposed operation will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers.

3. The proposed service will not unreasonably impair the use of the highways by the general public.

4. The Applicant is fit, willing and able, financially and otherwise, to perform the proposed service as a contract carrier.

5. The proposed operation will be consistent with the public interest and public policy declared in the Public Utilities Act of North Carolina.

CONCLUSIONS

We conclude that the characteristics of the thermoplastic products to be transported and the unusual handling and delivery requirements of the shipper clearly establishes the

proposed operation as that of a contract carrier and that the application should be approved.

IT IS THEREFORE ORDERED That Joe R. Brawley, d/b/a Brawley Transportation Company, be granted a permit authorizing transportation as a contract carrier of Thermoplastic materials and compounds as set forth in Exhibit A attached hereto and made a part hereof.

IT IS FURTHER ORDERED That such permit be issued and operation begun only when Applicant has furnished evidence of insurance liability coverage, filed schedule of minimum rates and charges and has otherwise complied with the rules and regulations of the Commission not later than thirty (30) days from the effective date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1415 Joe R. Brawley, d/b/a
Brawley Transportation Company
944C Davie Avenue
Statesville, North Carolina

Contract Carrier

EXHIBIT A Group 24. Thermoplastic Materials and Compounds, thermoplastic products, equipment, materials and supplies used in the fabrication of wooden bins, frames, materials, supplies and all parts used in the manufacture of thermoplastic materials, compounds and products, from the Plant of Fusion Rubbermaid Corporation, Statesville, North Carolina, to its plant in Statesville, North Carolina, to and between Jobbers of affiliated plants in North Carolina

DOCKET NO. T-1337, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Elmer Levon Bryant, d/b/a Bryant's Trailer Convoy, 514 North Main Street, Fuquay-Varina, North Carolina, for authority to transport Group 24, Mobile Homes or House Trailers, Statewide	) RECOMMENDED) ORDER)))

HEARD IN: Offices of the Commission, Old YMCA Building, Raleigh, North Carolina, on January 17, 1968, at 10 a.m.

BEFORE: Commissioner M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

Waverly F. Akins
Attorney at Law
110 Depot Street
Fuquay-Varina, North Carolina

For the Protestants:

Charles B. Morris, Jr.
Jordan, Morris and Hoke
Attorneys at Law
P. O. Box 1606, Raleigh, North Carolina
For: National Trailer Convoy, Inc.
Transit Homes, Inc.

W. T. Shaw
Attorney at Law
308 Lawyers Building
Raleigh, North Carolina
For: Matthew W. Cooper, d/b/a
Cooper's Mobilehome Moving Service

BIGGS, COMMISSIONER: Application was filed in this cause by Elmer Levon Bryant, d/b/a Bryant's Trailer Convoy, for authority to operate as a common carrier, over irregular routes, of mobile homes or house trailers between all points and places throughout the State of North Carolina. Notice of hearing on said application was issued by the Commission on October 16, 1967, advising that said application would be heard on November 21, 1967, and that protest to the application should be filed with the Commission at least ten days prior to said date. Within the time prescribed by said notice, protests were filed by Transit Homes, Inc.; National Trailer Convoy, Inc.; Morgan Drive Away, Inc.; and Matthew W. Cooper, d/b/a Cooper's Mobilehome Moving Service.

On motion of counsel for protestant Morgan Drive Away, Inc., the case was continued until December 6, 1967, and, thereafter, on motion of counsel for protestant Transit Homes, Inc., the case was further continued until January 17, 1968, at which time it came on for hearing with all parties present or represented by counsel.

The applicant testified to the effect that he now holds N.C. Certificate No. C-903 for moving mobile homes from points and places in Wake County to all points and places in the State of North Carolina, and from points and places throughout the State of North Carolina to points and places in Wake County, and between all points in Wake County. He further testified that he now has available for the moving of mobile homes one truck-tractor that is properly licensed and insured, one truck-tractor designated as a spare which is not licensed and insured, one wrecker truck that is used by him in connection with his garage business that is suitable for moving certain mobile homes but is not licensed for such use, and one pickup truck that is used as an escort vehicle and for transporting fuel tanks, blocks and other materials used in connection with mobile home installations. His one licensed tractor is equipped with an adjustable chassis and can be used for transporting the longest and widest mobile home that may be transported over the highways of North Carolina. The applicant further testified that he now has net personal assets valued at approximately $100,000. He further stated that he now provides and is willing to continue providing a moving service which includes making the unit road-ready (removing fuel tanks, disconnecting utilities, removing underpining and installing and checking wheels and other road gear), the moving of the unit over the highways to its destination, and the setting up of a unit at the point of delivery by reinstalling all utilities, fuel tanks and underpinning. Additional charges are made for these take-down and put-up services, which services are optional to the shipper.

Applicant further stated that he has had frequent requests to transport mobile homes from originating points lying outside of Wake County to destination points also lying outside of Wake County, which service he was unable to provide under his existing authority. Many of these requests have come from Harnett, Johnston and Durham Counties.

Mr. Vernon Kenneth Stubblefield, of Durham Mobile Homes, Durham, North Carolina, testified that mobile home sales have greatly increased in recent years; that one out of every five single family dwellings in the United States is now a mobile home; and that North Carolina ranks among the top three states in mobile home sales. He stated that he had received inquiries from persons in his area desiring to have mobile homes moved, and that he knew that such persons had experienced difficulty in getting complete take-down and put-up services from some other carriers and had been delayed in getting their units moved short distances.

Mrs. Perry Langston, of Buies Creek, testified that many students at Campbell College in Buies Creek reside in mobile homes; that Buies Creek has ten mobile home parks, one of which is located adjacent to her home; that some of the students have experienced difficulty in getting their mobile homes moved in and out of the Buies Creek area; that there

is no mobile home mover with trucks domiciled in Harnett County; and that it would be a convenience to the community of Buies Creek to have the applicant authorized to move mobile homes in and out of their community to and from all places in North Carolina.

Mr. Woodrow Stroud, of Smithfield, North Carolina, Manager of J. J.'s Mobile Homes in Smithfield, testified that his company sold more than 40 mobile homes during the year 1967, most of which were delivered within a 25 to 30 mile radius of Smithfield. He stated that although his company is authorized to transport such units, its equipment was frequently unavailable and most of the units sold on the Smithfield lot were moved either by Walter G. Ricks (N.C. Certificate No. C-945), of Selma, North Carolina, or by Matthew W. Cooper, of Raleigh (N. C. Certificate No. C-821), or by the applicant, said Mr. Ricks being the only mobile home mover with equipment domiciled in Johnston County. Of the 43 units sold on Mr. Stroud's Smithfield lot in 1967, about 20 were delivered in Johnston County, three or four were delivered to Wake County, one or two were sent to Winston-Salem and the remainder were delivered in Harnett County. Mr. Stroud further testified that Ricks and Cooper would frequently be tied up at a time when requested moves were outside the scope of applicant's authority, and that it would be a convenience to the people of his county for the applicant to be authorized to transport mobile homes from the county to any place in the State. He also stated that Mr. Ricks' one truck is too long to handle 60-foot trailers, whereas the applicant has equipment to move such units.

Mr. Larry Wise, of Route 2, Fuquay-Varina (Harnett County), testified that he lives in a mobile home; that during the year 1965 he moved said home a distance of one-half mile in Harnett County; that at the time such home movement was made, he contacted all mobile home movers listed in the Yellow Pages of the Raleigh Telephone Directory and was unable to get his unit moved by any of them; and that he finally had to arrange for moving the unit himself. Mr. Wise further testified that there is no authorized mobile home carrier with units domiciled in Harnett County; that there is a need in Harnett County to have a mobile home mover located close by; and that it would be a convenience for the applicant, who is domiciled in Fuquay-Varina a few miles from the county line, to be authorized for moving mobile homes in Harnett County.

Mr. Ronald King, of Route 2, Fuquay-Varina, North Carolina, testified that he operates a mobile home sales lot in Fuquay-Varina and is a truck driver for the applicant. He testified that he frequently answers the phone for the applicant and knows that numerous requests come in requesting the transport of mobile homes between places located outside applicant's territory.

The protestants offered the testimony of Mr. Ernest J. Cournaya, District Manager of Morgan Drive Away, Inc., who

stated that his company has 24 trucks domiciled in North Carolina, at Charlotte, Jacksonville, Fayetteville and Cary, with five of such units being in Cary. He stated that his company advertises in newspapers, trade journals and the major telephone directories in the State.

Mr. Marvin Hintor Parr, District Manager of National Trailer Convoy, Inc., testified that his company has three trucks domiciled in North Carolina, one each at Fayetteville, Randleman and Matthews, and that his company also has an extensive advertising program.

Mr. Ernest Charles Moody, District Manager of Transit Homes, Inc., testified that his company has 34 vehicles stationed in North Carolina at 12 terminal points, including two trucks in the Raleigh area, and that his company also does extensive advertising throughout the State.

Mr. Matthew W. Cooper testified that he has three trucks domiciled in Wake County and advertises in the Raleigh newspapers and telephone directory. Mr. Cooper further testified that he furnishes complete take-down and put-up service.

Each of the witnesses for protestants testified that his respective company is ready, willing and able to furnish all the mobile home transportation requirements in the area in which the applicant proposes to operate.

At the conclusion of the evidence, the applicant orally moved for leave to amend his application by restricting the area of his operations as follows:

> From all points and places within Durham, Orange, Chatham, Johnston, Nash, Franklin and Harnett Counties to all points and places in North Carolina; from all points and places in North Carolina to all points and places in said counties; and between all points and places in said counties.

The amendment was allowed.

Based upon the evidence thus adduced, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the applicant, Elmer Levon Bryant, d/b/a Bryant's Trailer Convoy, 514 North Main Street, Fuquay-Varina, North Carolina, is an individual proprietor who now holds operating authority to transport mobile homes from all points and places in Wake County to points and places throughout the State of North Carolina, from all points and places in the State of North Carolina to points and places in Wake County, and between points and places in Wake County, under N.C. Certificate No. C-903.

2. That the shippers of mobile homes and house trailers in Harnett, Johnston and Durham Counties have experienced delays in arranging for the transportation of said trailers from places within said counties to various other places within the State of North Carolina and have experienced other difficulties in obtaining short-haul movements and complete take-down and put-up services, and that such delays and difficulties evidence a need for additional mobile home transportation service in said counties.

3. That the applicant is equipped to move any mobile home or house trailer that may be lawfully transported over the highways of North Carolina and is able to provide complete take-down and put-up service.

4. That the applicant is fit, willing and able to provide transportation of mobile homes and house trailers from all points and places within Harnett, Johnston and Durham Counties to all points and places in North Carolina, from all points and places in North Carolina to all points and places within said counties, and between all points and places in said counties.

5. That the public convenience and necessity will be served by the granting to applicant of authority to transport mobile homes in said additional areas.

6. That the evidence adduced does not weigh upon the question of whether there is a need for such additional transportation services in Orange, Chatham, Franklin and Nash Counties.

CONCLUSIONS

From the foregoing Findings of Fact it is concluded that the need for additional transportation services in said counties, the providing of which will be a convenience to the residents of those counties and of the State of North Carolina, justifies the issuance to applicant of a certificate of public convenience and necessity for the transporting of mobile homes as a common carrier, over irregular routes, from, to and between the points and places specified on the Exhibit hereto attached. It is further concluded that the evidence and the Findings of Fact do not demonstrate a need for such additional transportation service in the Counties of Orange, Chatham, Nash and Franklin so as to justify the issuance of a certificate of public convenience and necessity relating to such counties.

IT IS THEREFORE ORDERED:

1. That the application for Elmer Levon Bryant, d/b/a Bryant's Trailer Convoy, for authority to engage in the transportation of mobile homes from points and places in Harnett, Johnston and Durham Counties to points and places throughout the State of North Carolina, from points and places in the State of North Carolina to points and places

in said counties, and between all points and places in said counties, is hereby granted, and IT IS HEREBY ORDERED that the applicant's certificate, N. C. Certificate No. C-903, be amended so as to provide for such additional authority, the full scope of applicant's authority as hereby amended being set forth on Exhibit B hereto attached.

2. That the application of said Elmer Levon Bryant, d/b/a Bryant's Trailer Convoy, for authority to transport mobile homes as a common carrier, over irregular routes, from points and places in Orange, Chatham, Nash and Franklin Counties to points and places throughout the State of North Carolina, and from points and places throughout the State of North Carolina to points and places in said counties, and between points and places in said counties, be and the same is hereby denied.

3. That prior to initiating any additional transportation services under the authority of this order, applicant shall file with the Commission appropriate schedule of rates covering said transportation service and shall otherwise comply with all the rules and regulations of the Commission incident to the providing of said service.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of January, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1337, SUB 2

Bryant's Trailer Convoy
Elmer Levon Bryant, d/b/a
514 North Main Street
Fuquay-Varina, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, Mobile Homes or House Trailers, from all points and places within Wake, Harnett, Johnston and Durham Counties to all points and places in North Carolina; from all points and places in North Carolina to all points and places within said counties; and between all points and places in said counties.

DOCKET NO. T-1250, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Bulk Haulers, Inc., 1901 Wooster Street, Wilmington, North Carolina) RECOMMENDED) ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, Thursday, October 3, 1968, at 10:00 o'clock A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on May 31, 1968, Bulk Haulers, Inc., 1901 Wooster Street, Wilmington, North Carolina, seeks irregular route common carrier authority to "transport empty shipping containers between points and places in the State of North Carolina to the plant site of Hercules, Inc. near Wilmington, North Carolina." Notice of said application, together with a description of the authority sought, along with the time and place of hearing was published in the Commission's Calendar issued June 6, 1968. No protests were filed and no one appeared at the hearing in opposition thereto.

The evidence tends to show that Applicant, in connection with the transportation of dimethyl terephthalate for the account of Hercules, Inc., from its plant site near Wilmington, has occasion to return empty containers; that said containers, especially designed for the convenience of the shipper in loading and packaging the commodity, are approximately 42" x 46" and about 8' tall; that said containers are large tote bins having an empty weight of from 260 to 315 pounds and that Hercules owns the bins which must be returned for future shipment.

Upon consideration of the application and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That Applicant, Bulk Haulers, Inc., is a certificated common carrier operating in intrastate commerce under Common Carrier Certificate No. C-862, heretofore issued by this Commission.

2. That the Commission in its Order in Docket No. 4066-V issued May 30, 1968, found that Bulk Haulers, Inc., was authorized to transport, in truckload lots only, dimethyl terephthalate, both in molten (liquid) form in bulk and in pellet form in containers on flatbed trailers, but that

Applicant was not authorized to transport empty containers used in transporting dimethyl terephthalate in pellet form.

3. That the Commission in said Order in Docket No. 4066-V directed Applicant not to transport on return, or otherwise, empty containers used in the transportation of dimethyl terephthalate until it had made application for permanent authority and temporary authority to do so and had been issued at least temporary authority by this Commission.

4. That pursuant to the filing of an application for permanent authority and temporary authority, the Commission by Order dated June 6, 1968, in Docket No. T-1250, Sub 8, granted Applicant temporary authority under G.S. 62-116 to operate as an irregular route common carrier for the return of special type empty shipping containers used in the transportation of pelletized dimethyl terephthalate from points and places within the State of North Carolina to the plant site of Hercules, Inc., near Wilmington, North Carolina.

5. That public convenience and necessity requires the proposed service in addition to existing authorized transportation service.

6. That the applicant is fit, willing and able to properly perform the proposed service.

7. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

Upon consideration of the evidence presented and the facts found, the Hearing Examiner is of the opinion and concludes that Applicant has satisfied the burden of proof required for the granting of the authority sought and that said application should be granted.

IT IS, THEREFORE, ORDERED That the application of Bulk Haulers, Inc., 1901 Wooster Street, Wilmington, North Carolina, in this docket, be, and the same is, hereby granted and that Applicant's certificate be amended to include the authority particularly described in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That Bulk Haulers, Inc., comply with the rules and regulations of the Commission and institute operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

IT IS FURTHER ORDERED That the temporary authority granted to Applicant in this docket, be, and the same is, hereby cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1250 SUB 8

Bulk Haulers, Inc.
1901 Wooster Street
Wilmington, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

For the return of special type empty shipping containers used in the transportation of pelletized dimethyl terephthalate from points and places within the State of North Carolina to the plant site of Hercules, Inc., near Wilmington, North Carolina.

DOCKET NO. T-1250, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Bulk Haulers, Inc., 1901 Wooster Street, Wilmington, North Carolina, for Authority to Transport Group 21, Fish Products, in Bags and in Bulk, From Points and Places in the Counties of New Hanover and Brunswick to All Points and Places Within the State and Return of Rejected or Unclaimed Shipments	) RECOMMENDED ORDER

HEARD IN: The Commission's Hearing Room, Raleigh, North Carolina, on Wednesday, October 30, 1968, at 10:00 a.m.

BEFORE: Examiner T. Grant Killian

APPEARANCES:

For the Applicant:

Kenneth Wooten, Jr.
Bailey, Dixon & Wooten
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestant:

Wesley E. Garner
Long Beach Road
Southport, North Carolina
For: Himself

KILLIAN, EXAMINER: By application filed with the Commission on the 8th day of August, 1968, Bulk Haulers, Inc., 1901 Wooster Street, Wilmington, North Carolina, an irregular route common carrier of certain commodities in bulk, liquid or dry, by motor vehicle, seeks authority to engage in the transportation of Group 21 (Other Specific Commodities); namely, Fish Products, in bags and in bulk, liquid or dry, from points and places within the counties of New Hanover and Brunswick to all points and places within the State of North Carolina and the return of rejected or unclaimed shipments.

Notice of the filing, together with a description of the rights sought and the time and place of hearing was published in the Commission's Calendar of Hearings issued on August 15, 1968.

A letter-protest to the granting of the authority sought was filed on October 28, 1968, by Wesley E. Garner, Southport, North Carolina, a carrier holding a permit authorizing the contract carriage of fish meal, fish scrap, fish oil, fish by-products and solubles from certain points and places, including Southport, Brunswick County, to various destinations in the State.

In support of its application the Applicant offered the testimony of its General Manager, Julien K. Taylor, III, who testified in regard to the present authority held by his company to transport commodities in bulk, in both dry or liquid form and in packages. The witness also offered an exhibit listing the equipment owned by applicant that is suitable for the performance of the transportation for which authority is sought and stated that his company was in a position to obtain additional equipment as needed. An exhibit was also filed which discloses the assets and liabilities of the Applicant.

Applicant also offered the testimony of Thilo Best, Regional Sales Manager for the Commodities Division of Cargill, Inc., an exporter and distributor of grains and a very large variety of agricultural products. The witness testified that his company is now importing dry Peruvian fish meal into the southeastern United States through the ports of Savannah, Pensacola and Mobile. Fish meal is a high protein product that is used almost exclusively in poultry feeds. The witness further testified that Cargill was actively handling with view of leasing a handling facility on the Cape Fear River to be located on the New Hanover or possibly the Brunswick County side of the river from which it proposed to ship dry fish meal by motor vehicle to poultry feed mills throughout the State.

Protestant, Wesley E. Garner, appeared in his own behalf. The witness testified that he was not interested in the possibility of transporting dry fish meal for account of Cargill, Inc., but registered protest with view of protecting his contract rights and only opposed the

application of Bulk Haulers, Inc., insofar as said carrier was seeking authority to transport fish products from points and places in Brunswick County.

Having considered all evidence adduced on all material issues arising in the proceeding the Hearing Examiner now makes the following

FINDINGS OF FACT

(1) That the applicant now holds North Carolina Intrastate Common Carrier Certificate No. C-862 and that pursuant to said authority it now operates as an irregular route common carrier of property in North Carolina intrastate commerce.

(2) That protestant, Wesley E. Garner, now holds Contract Carrier Permit No. P-16 and pursuant thereto operates as a contract carrier in the transportation of fish products from Southport, Brunswick County, to points and places within the State.

(3) That Cargill, Inc., is a distributor of dry fish meal in the Southeastern United States and desires to distribute said product from a warehouse handling facility to be located on the Cape Fear River in the Wilmington, North Carolina, area, in either New Hanover or Brunswick County.

(4) That dry fish meal is a high protein type product that is used almost exclusively in poultry feed and that mills engaged in the manufacture and mixing of poultry feeds are located at points and places throughout the State.

(5) That the supporting shipper Cargill, Inc., prefers to be served by a common carrier rather than a contract carrier.

(6) That Cargill, Inc., is in need of transportation now and will need in the future the service of a common carrier to transport dry fish meal from its warehouse location in either New Hanover or Brunswick Counties to feed mills located at points and places throughout the State.

(7) That Applicant has not borne the burden of proving there is a need for the transportation of fish products, other than dry fish meal.

(8) That supporting shipper only proposes to ship its product from a handling facility to be located on the Cape Fear River in either New Hanover or Brunswick Counties.

(9) That Bulk Haulers, Inc., has the equipment, is financially able and otherwise qualified to engage in the transportation of property in the manner sought in its application.

(10) That public convenience and necessity require the proposed service insofar as it relates to the transportation of dry fish meal from a warehouse facility to be located on the Cape Fear River in either New Hanover or Brunswick Counties in addition to existing authorized transportation services.

Based on the evidence adduced of record and the foregoing Findings of Fact, the Hearing Examiner makes the following

CONCLUSIONS

That the public convenience and necessity will be served, both now and in the future, by a grant to the Applicant of authority to engage as a common carrier in the transportation over irregular routes of shipments consisting of dry fish meal, in bulk or in packages, from New Hanover County and from the site of the plant or warehouse of Cargill, Inc., in Brunswick County to all points and places within the State of North Carolina and the return of rejected or unclaimed shipments and that in all other respects the application herein should be denied.

IT IS ACCORDINGLY ORDERED:

(1) That Common Carrier Certificate No. C-862 heretofore issued by this Commission to Bulk Haulers, Inc., Wilmington, North Carolina, be amended to include the authority set forth in Exhibit B attached and made a part hereof.

(2) That, except as set forth in (1) above, the application of Bulk Haulers, Inc., for authority to engage in the transportation of fish products, be, and the same is hereby denied.

(3) That the applicant cause to be amended its tariff on file with this Commission so as to indicate to the shipping and receiving public its authority to render the additional transportation service authorized hereby.

(4) That a copy of this order be transmitted to Applicant; to the attorney for applicant and to Wesley E. Garner, Southport, North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1250 SUB 10

Bulk Haulers, Inc.
1901 Wooster Street
Wilmington, North Carolina

	Irregular Route Common Carrier Authority
EXHIBIT B	Transportation of dry fish meal, in packages or in bulk from New Hanover County and from the plant or warehouse site of Cargill, Inc., in Brunswick County to all points and places within the State of North Carolina and the return of rejected or unclaimed shipments.

DOCKET NO. T-226, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Burton Lines, Inc., 815 Ellis) RECOMMENDED
Road, Durham, North Carolina) ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on April 23, 1968, at 2:00 p.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey and
Clarence H. Noah
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on March 4, 1968, Burton Lines, Inc. (Applicant), 815 Ellis Road, Durham, North Carolina, seeks irregular route common carrier authority to engage in the transportation of Group 19, Unmanufactured Tobacco and Accessories, on a statewide basis. The application contains a note to the effect that Applicant is presently authorized to transport tobacco and related articles under a certificate issued July 17, 1943, and reissued pursuant to the provisions of the 1947 Truck Act and wishes the commodity description in its certificate be amended to conform with the definition in Group 19.

The application, along with the time and place of hearing, was published in the Commission's Calendar of Hearings issued March 19, 1968. No protests were filed and no one appeared at the hearing in opposition thereto.

It appears from the evidence and the records of the Commission that Applicant's present authority to engage in

the transportation of tobacco and related commodities is contained in Items 2 and 3 of Applicant's Certificate No. C-33. Said authority reads as follows:

"(2) Tobacco, loose or in packages, empty hogsheads, hogshead material, tobacco baskets, tobacco sheets and other tobacco packing material between all points and places within the State of North Carolina; and also tobacco manufacturing supplies and/or manufactured tobacco inter manufacturing plant between Durham and Reidsville.

"(3) Transportation of leaf tobacco packed in hogsheads and the equipment and supplies used in the handling and packing of leaf tobacco between points and places within a radius of 150 miles of Pilot Mountain."

It further appears that the authority described in Item 2 was granted by Order of the Commission in Docket No. 2305 dated July 17, 1943, and that the authority contained in Item 3 was acquired by purchase approved by the Commission in Docket No. T-226, Sub 2, dated May 14, 1965; that the commodity description for unmanufactured tobacco and accessories as described in Group 19 was adopted on June 1, 1948; that although Applicant, at the time and for years prior thereto, had been transporting the items described in Group 19, when its certificate was issued pursuant to the 1947 Truck Act, the old commodity description as contained in Item 2 was brought forward; that in view of the difference in the wording of Applicant's authority and the description contained in Group 19, shippers have sometimes questioned Applicant's authority to transport certain of the commodities described in Group 19, and that Applicant has actually lost business because of the discrepancy.

The application is supported by P. Lorillard Company and The American Tobacco Company. Witnesses from these two firms testified that they use the services of Applicant extensively and have found Applicant to be a very competent and reliable carrier; that the commodity description in carrier's present authority has been found to be somewhat lacking in fullness and completeness as to indicate what commodities Applicant can transport under its tobacco rights; that it is necessary that they have a clear cut definition of the authority spelled out; that more and more it is becoming incumbent upon the shipper to interpret certificates for the purpose of determining whether a carrier has the required authority before a shipment is tendered for transportation; that the amendment to its authority which Applicant seeks would remove any doubt in their minds as to what Applicant is authorized to transport and that there is definitely a need for a clarification of Applicant's authority.

Upon consideration of the application, the evidence adduced and the record in this case, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That since 1943 and prior thereto, Applicant has been engaged in the intrastate transportation of tobacco and accessories and other items shown in Group 19 of this Commission's Rule R2-37.

2. That under the Grandfather Provisions of the North Carolina Truck Act of 1947, Applicant would have met the statutory requirements for a grant of authority as described in Group 19 of Rule R2-37.

3. That public convenience and necessity requires that Applicant be granted authority to engage in the transportation of Group 19 in lieu of the authority which it now holds in Items 2 and 3 as reflected in its certificate.

4. That Applicant is not only ready, willing and able to perform the service applied for, but has been doing so for several decades.

5. That Applicant is solvent, has the equipment and is financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

The records of the Commission will reflect and it is common knowledge that Applicant is one of the major tobacco haulers in the State and has been for more than twenty-five (25) years. Applicant's experience and qualifications are well known. The fact that Applicant's certificate has not been previously amended to conform with the language in Group 19 appears to have been an oversight.

Based upon the application, the evidence presented in this case and the foregoing findings of fact, the Hearing Examiner concludes that Applicant has borne the burden of proof required and that Applicant's certificate should be amended by eliminating therefrom Items 2 and 3 and substituting in lieu thereof the authority applied for.

IT IS, THEREFORE, ORDERED That the application of Burton Lines, Inc., 815 Ellis Road, Durham, North Carolina, in this docket, be, and the same is, hereby granted and that Common Carrier Certificate No. C-33 be, and the same is, hereby amended to include the authority more particularly described in Exhibit B hereto attached.

IT IS FURTHER ORDERED That Items 2 and 3 of Applicant's present authority be, and the same are, hereby cancelled and eliminated from said certificate.

IT IS FURTHER ORDERED That Applicant comply with the Commission's tariff requirements and otherwise comply with the rules and regulations of this Commission and institute

operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-226 SUB 4

Burton Lines, Inc.
815 Ellis Road
Durham, North Carolina

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of Group 19. UNMANUFACTURED TOBACCO AND ACCESSORIES. This group includes the transportation of tobacco leaf, unmanufactured tobacco scraps or stems in sheets, baskets, hogsheads, tierces, boxes, or bales, including cooperage stock, tobacco baskets, and tobacco sheets, to be used in the manufacturing, processing, storage, marketing, and transporting of tobacco and tobacco products, including other accessories, materials and supplies, and equipment used, or useful in the manufacturing, processing, storage, marketing, and transporting of tobacco or tobacco products, or substitutes for any of said articles. STATEWIDE

DOCKET NO. T-1420

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of James Charles Ellis, T/A Carolina Eggs, Route 6, Shelby, North Carolina) RECOMMENDED ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, March 14, 1968, at 2:00 o'clock p.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Joseph C. Whisnant
Whisnant & Lackey
Attorneys at Law
P. O. Box 145, Shelby, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on December 27, 1967, James Charles Ellis, T/A Carolina Eggs (Applicant), Route 6, Shelby, North Carolina, seeks irregular route common carrier authority to engage in the transportation of Group 6, Eggs, over any of the Highways of North Carolina.

Notice of the application together with the time and place of hearing was given in the Commission's Calendar of Hearings issued January 16, 1968. No protests were filed and no one appeared at the hearing in opposition thereto.

During the course of the hearing, Applicant moved to amend his application to include authority to transport processed poultry (a) between all points within Cleveland County, (b) from all points within Cleveland County to all points in the State of North Carolina and (c) from all points within the State of North Carolina to all points within Cleveland County. Since the amendment proposed would tend to broaden the authority sought, said amendment was allowed with the understanding that the application, as amended, would be republished for the purpose of giving full and complete notice to the public of the authority sought. The amended application was republished in the Commission's Calendar of Hearings issued on March 19, 1968, with the following notation:

"If no protests are filed by 5:00 p.m., March 29, 1968, this case will be decided on the basis of the record which was made at the hearing on March 14, 1968, and no further hearing will be held."

No protests were filed to the amended application.

Evidence in support of the application tends to show that Applicant has been engaged in the private carriage of eggs for some nineteen (19) years; that due to recent changes in the method of distribution of the commodity, he has been called upon to haul eggs for others on a for hire basis; that, in addition to eggs, Applicant is frequently called upon to transport processed poultry; that Applicant owns and operates five (5) tractor and trailer units suitable for the transportation of such commodities and that Applicant has a net worth in excess of $100,000.00. Public witnesses appearing in support of the application include Mr. J. J. Cox, a Vocational Agriculture Teacher; Mr. Robert F. Morgan, an official of an agricultural supply organization; Mr. Ray Moore, Mr. Tommy Neal and Mr. Baxter Scruggs, all of whom are poultry and egg producers. Each of the public witnesses testified as to the importance of the poultry industry in Cleveland County, the extreme need for the service proposed by Applicant and the excellent qualifications of Applicant to perform the service under the authority which Applicant seeks. It is the concensus of the public witnesses that the service which Applicant seeks authority to perform is

essential to the poultry industry which has undergone such a phenomenal growth, particularly within Cleveland County during the past several years.

As previously indicated, no one appeared at the hearing in opposition to the granting of the authority sought and no protests to the amended application have been received by the Commission.

Upon consideration of the application, the evidence submitted and the testimony of record, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That a public demand and need exists for the proposed service in addition to existing authorized service.

2. That the applicant is fit, willing and able to properly perform the proposed service.

3. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that the applicant has carried the burden of proof required for the granting of the authority sought in the amended application and that the said application should be granted, as amended.

IT IS, THEREFORE, ORDERED:

That a common carrier certificate be granted James Charles Ellis, T/A Carolina Eggs, Route 6, Shelby, North Carolina, to engage in the transportation of eggs and processed poultry, as particularly described in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED:

That James Charles Ellis, T/A Carolina Eggs, file with the Commission a tariff of rates and charges, certificates of the required insurance, lists of equipment, designation of process agent, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1420 James Charles Ellis
T/A Carolina Eggs
Route 6
Shelby, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

1. Transportation of eggs between all points and places within the State of North Carolina.

2. Transportation of processed poultry:

   (a) Between all points within Cleveland County.

   (b) From all points within Cleveland County to all points in the State of North Carolina.

   (c) From all points within the State of North Carolina to all points within Cleveland County.

DOCKET NO. T-32, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Caustic Soda Transportation Company, Inc., 787 Haywood Road, West Asheville, North Carolina, to transport effluent chemicals of stream sanitation and pollution control installations and by-products thereof, liquid and dry in bulk, as a common carrier over irregular routes, to and from all points and places within the North Carolina Counties of Buncombe, Haywood, Transylvania, Henderson, McDowell, Jackson, Madison, Polk and Yancey) ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on September 10, 1968, at 10 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners M. Alexander Biggs, Jr. (Presiding), and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Robert R. Williams, Jr.
Williams, Williams and Morris
Attorneys at Law
P. O. Box 7316, Asheville, North Carolina

No Protestants.

BIGGS, COMMISSIONER: On June 17, 1968, Caustic Soda Transportation Company, Inc. (applicant), filed with the North Carolina Utilities Commission (Commission) an application to transport effluent chemicals of stream sanitation and pollution control installations and by-products thereof, liquid and dry in bulk, to and from all points and places within the North Carolina Counties of Buncombe, Haywood, Transylvania, Henderson, McDowell, Jackson, Madison, Polk and Yancey, said transportation to be provided by applicant as a common carrier, over irregular routes, within said territory.

Notice of the hearing of said application was given in the Calendar of Hearings issued by the Commission on July 16, 1968, setting said matter for hearing on Wednesday, September 11, 1968, at 10 o'clock a.m., at which time the matter came on to be heard.

No protests or objections were made to the granting of said application, and no persons other than the applicant and its witnesses and counsel appeared at the hearing.

FINDINGS OF FACT

Based upon the evidence adduced at the hearing, the Commission makes the following findings of fact:

1. The applicant, Caustic Soda Transportation Company, Inc., is a duly organized and existing North Carolina corporation now holding N. C. Intrastate contract carrier Permit No. P-10 and Interstate common carrier Certificate No. MC106009.

2. Under its said North Carolina contract carrier permit, the applicant is authorized to transport and does now transport caustic soda and certain other chemicals under contract with certain firms located in western North Carolina and in the territory in question, copies of which contracts are on file with the Commission.

3. A number of manufacturing concerns in the North Carolina counties sought to be served by the applicant have manufacturing processes which produce waste chemicals that cannot be discharged into the streams and rivers of the area and that must be transported from the plant site to other places for disposition. These waste materials are generally described as effluent chemicals and by-products, and they accumulate in the manufacturing process by reason of anti-pollution devices and regulations. Such effluent chemicals and by-products are frequently disposed of by dumping into natural openings in the earth, in abandoned holes and shafts and, in some cases, by dumping into the sea. In any case, such chemicals must be transported to either the point of disposal or to a rail head for shipment to such point.

4. There are not sufficient common carriers with authority to transport the product in question to meet the requirements of the shippers of such commodity, and there is a need for an additional carrier or carriers to be certificated for the purpose of providing such transportation.

5. The applicant is ready, willing and able to provide such transportation and can do so with its present equipment and in connection with its present hauling operations.

6. The certification of the applicant as a common carrier will not interfere with its operations as a contract carrier, and public convenience and necessity requires that the applicant be authorized to operate as both common carrier and contract carrier.

CONCLUSIONS

It is concluded by the Commission that some of the manufacturing plants in the North Carolina counties mentioned in the caption have need for a transportation service whereby the waste products and chemicals accumulated in their manufacturing processes by reason of anti-pollution devices and regulations can be transported to some disposal point. It is further concluded that the applicant is ready, willing and able to transport such materials, and that the transportation of same by it as a common carrier will not interfere with its operations as a contract carrier, and that the public interest requires that the applicant should be permitted to hold both a certificate as a common carrier and a permit as a contract carrier.

IT IS, THEREFORE, ORDERED that the applicant, Caustic Soda Transportation Company, Inc., be and it is hereby granted a certificate of public convenience and necessity for transportation authority as set forth in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED, in the discretion of the Commission, that the applicant is permitted to hold both the certificate as a common carrier hereby granted and N. C. intrastate contract carrier Permit No. P-10 already issued.

IT IS FURTHER ORDERED that the applicant, prior to providing transportation service under said certificate, shall file with the Commission a schedule of rates covering such transportation, and that it shall file such other information and make such other reports as are required under the statutes and the Commission regulations.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-32, SUB 4

Caustic Soda Transportation Company, Inc.
787 Haywood Road
West Asheville, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of effluent chemicals of stream sanitation and pollution control installations and by-products thereof, liquid and dry in bulk, to and from all points and places within the North Carolina Counties of Buncombe, Haywood, Transylvania, Henderson, McDowell, Jackson, Madison, Polk and Yancey.

DOCKET NO. T-262, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Central Motor Lines, Inc.,) RECOMMENDED
324 North College Street, Charlotte, North) ORDER
Carolina)

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on February 20, 1968, at 10:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

James C. Little
Hatch, Little, Bunn & Jones
Attorneys at Law
327 Hillsborough Street
Raleigh, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on November 14, 1967, Central Motor Lines, Inc. (Applicant), 324 North College Street, Charlotte, North Carolina, a regular route common carrier of property by motor vehicle seeks to amend its presently held authority which reads: "From Charlotte to Newton,

viz: from Charlotte to Newton over N.C. Highway 16. Return over the aforesaid route serving all intermediate points." to read: "From Charlotte to Newton, viz: from Charlotte to Newton over N.C. Highway 16, serving Sherrills Ford and the Superior Cable Plant Site located about 3 1/2 miles Northwest of Sherrills Ford on County Road 1848 as off-route points. Return over the aforesaid route serving all intermediate and specified off-route points."

Notice of the filing together with a description of the rights sought and the time and place of hearing was published in the Commission's Calendar of Hearings issued on November 15, 1967. No protests to the application were filed and no one appeared at the hearing in opposition thereto.

In support of its application, Applicant offered by reference the records of the Commission, which include its present operating authority, its lists of equipment on file with the Commission, its latest annual report filed with the Commission and exhibits attached to the application which, among other things, tend to disclose the assets and liabilities of Applicant.

Testimony of Applicant tends to show that Applicant only seeks to serve Sherrills Ford and the Plant Site of Superior Cable Corporation as off-route points from Applicant's presently authorized route over N. C. Highway 16.

In addition, Applicant offered by reference the testimony of Mr. Mark Carswell, Traffic Manager of Superior Cable Corporation, as given in Docket No. T-208, Sub 26, which involved the application of Overnite Transportation Company for similar authority. Witness said in substance that a new plant which his firm is in the process of completing at a site near Sherrills Ford will process copper cable for closed circuit T. V. and community antenna T. V. systems; that said plant will contain one hundred thousand square feet of space; that cable produced at the plant will be shipped to all points in North Carolina; that some of the raw materials will move into the plant by truck and that over ninety percent (90%) of outbound shipments will be by motor carrier and that the average shipment will be between one thousand and three thousand pounds. The witness further testified that production at the plant should reach over a million pounds per month.

Upon consideration of the application and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That public convenience and necessity require the proposed service, in addition to existing authorized transportation service.

(2) That the applicant is fit, willing and able to properly perform the proposed service.

(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Applicant is presently authorized by this Commission to serve points and places along N. C. Highway 16 between Charlotte and Newton and it appears that Applicant can conveniently serve the Plant Site of Superior Cable Corporation at Sherrills Ford as an off-route point from its franchise on said N. C. Highway 16. It further appears that Applicant has the equipment, is financially able and otherwise qualified to render the proposed service.

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that the applicant has borne the burden of proof required for the granting of the authority sought and that the application should be granted.

IT IS, THEREFORE, ORDERED That the application, as clarified, be, and the same is, hereby granted and that Common Carrier Certificate No. C-124 in the name of Central Motor Lines, Inc., be, and the same is, hereby amended to include the authority more particularly described in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED That Central Motor Lines, Inc., file with the Commission appropriate tariffs and otherwise comply with the rules and regulations of the Commission and begin operating under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-262 SUB 8

Central Motor Lines, Inc.
324 North College Street
Charlotte, North Carolina

Regular Route Common Carrier Authority

EXHIBIT A

Transportation of general commodities, except those requiring special equipment as follows:

Serving Sherrills Ford and the Plant Site of Superior Cable Corporation located on County Road 1848, 3 1/2 miles northwest of Sherrills Ford as

off-route points from applicant's presently authorized route over N.C. Highway 16.

DOCKET NO. T-1419

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Cotton Growers Warehouses, Inc., 121 E. Davie Street, Raleigh, North Carolina, for authority to transport Group 21, Cotton in Bales	) RECOMMENDED) ORDER GRANTING) AUTHORITY

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on March 14, 1968, at 10:00 A.M.

BEFORE: John W. McDevitt, Commissioner

APPEARANCES:

For the Applicant:

F. Kent Burns
Boyce, Lake and Burns
P. O. Box 1406, Raleigh, North Carolina

No Protestants.

McDEVITT, COMMISSIONER: Cotton Growers Warehouses, Inc. (Applicant), filed application on December 21, 1968, for authority to transport, as an irregular route motor common carrier

Group 21, Cotton in Bales, in truckloads or less than truckload lots from farms, markets or places of storage to other places of storage, manufacturing or shipping points to and from all points and places in North Carolina.

Public hearing was scheduled and held as captioned. No protests or motions to intervene were filed. Applicant and counsel were present at the hearing and offered testimony and exhibits on which the Hearings Commissioner bases the following

FINDINGS OF FACT

Applicant, Cotton Growers Warehouses, Inc., is a duly created and existing North Carolina corporation, a wholly owned subsidiary of Carolina Cotton Growers Association, Inc., which markets cotton for the benefit of its members. Applicant operates twelve (12) of its own warehouses and stores cotton in seventy-five (75) public warehouses. Applicant has since 1948 engaged in trucking operations as a private carrier, transporting its own cotton from farms,

markets and places of storage, to other places of storage, manufacturing or shipping points. Applicant owns and operates five (5) tractors and five (5) trailers each having carrying capacity of 65,000 pounds, valued at $65,709.00, which transport cotton throughout North Carolina.

The balance sheet of Carolina Cotton Growers Association, Inc., and Cotton Growers Warehouses, Inc., at June 30, 1967, reflected total assets of $2,243,321, total liabilities of $914,273, and total retained margin $1,329,048.

Cotton is bought and sold by grade and staple in various quantities and delivery is required at specific times to meet production schedules of manufacturers. Storage of the various grades and staples of cotton in many warehouses at widely separated locations often make it necessary for the carrier to pick up partial loads at several different warehouses to fill a sales contract. These special loading and delivery requirements have not been adequately and satisfactorily met by common carriers and common carriers do not appear to be interested in providing the proposed service.

Based on the foregoing findings of fact the Hearings Commissioner makes the following

CONCLUSIONS

1. Public convenience and necessity require the proposed service in addition to existing authorized transportation service.

2. Applicant is fit, willing and able to properly perform the proposed service.

3. Applicant is solvent and financially able to furnish adequate service on a continuing basis.

IT IS, THEREFORE, ORDERED That applicant, Cotton Growers Warehouses, Inc., 121 E. Davie Street, Raleigh, North Carolina, be, and it hereby is, authorized to operate as a common carrier over irregular routes in intrastate commerce in the manner and within the territory set forth in Exhibit B hereto attached.

IT IS FURTHER ORDERED That this order shall constitute authorization of transportation services herein granted until a certificate shall have been issued.

IT IS FURTHER ORDERED That operations granted herein shall begin only when the applicant has furnished evidence of insurance coverage, filed tariff schedules of rates and charges and has otherwise complied with the rules and regulations of the Commission, all of which must be done within 30 days of the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1419 — Cotton Growers Warehouses, Inc.
121 E. Davie Street
Raleigh, North Carolina

Irregular Route Common Carrier

EXHIBIT B — Transportation of Group 21, Cotton in Bales, in truckloads or less than truckload lots from farms, markets or places of storage to other places of storage, manufacturing or shipping points to and from all points and places in North Carolina.

DOCKET NO. T-1414

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Culberson Motor Lines, Inc., P. O. Box 157, Moncure, North Carolina) ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on January 30, 1968, at 10:00 a.m.

BEFORE: Commissioners M. Alexander Biggs, Jr., Clawson L. Williams, Jr., and Thomas E. Eller, Jr. (presiding)

APPEARANCES:

For the Applicant:

Frank W. Bullock, Jr., and
Thomas P. McNamara
Maupin, Taylor & Ellis
Attorneys at Law
33 West Davie Street
Raleigh, North Carolina

No Protestants.

ELLER, COMMISSIONER: Through this application Culberson Motor Lines, Inc. (Applicant), P. O. Box 157, Moncure, North Carolina, seeks irregular route common carrier authority to engage in the transportation of plywood and veneer on a Statewide basis.

Public hearings were scheduled and held pursuant to notice published in the Commission's Calendar of Hearings. No protests were filed and no one appeared at the hearing in opposition to the granting of the proposed authority.

The evidence in support of the application tends to show that Applicant holds and has held for several years interstate authority to engage in the transportation of plywood and veneer and under such interstate authority engages in transportation of such commodities from North Carolina points to several of the eastern states; that Applicant owns and operates ten (10) tractors and fourteen (14) trailers, each of which is suitable for the transportation of the commodities applied for. In addition, the application is supported by Mr. Robert Hancock of Triangle Plywood Corporation, Moncure, North Carolina, who testified that his company has some two hundred (200) employees and ships approximately twenty-five (25) truckloads of plywood and veneer per week; that he has found the service of existing authorized carriers to be inadequate to suit his needs; that he has used the services of Applicant for interstate shipments and has found said services to be satisfactory and dependable.

Copies of the articles of incorporation and equipment list of Applicant, along with balance sheet reflecting Applicant's net worth in the amount of $65,000 were offered and received in evidence.

Upon consideration of the application, the evidence submitted and the testimony of record, the Commission makes the following

FINDINGS OF FACT

1. That a public need and demand exists, or reasonably will exist, for the proposed service in addition to existing authorized transportation service.

2. That the Applicant is fit, willing, and able to properly perform the proposed service.

3. That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings, the Commission concludes that the public convenience and necessity will be served by granting the authority sought and that Applicant is capable of properly operating thereunder in the public's interest.

IT IS, THEREFORE, ORDERED:

1. That the application herein be, and the same is hereby, granted and that Culberson Motor Lines, Inc., P. O.

Box 157, Moncure, North Carolina, be issued a common carrier certificate containing the authority particularly described in Exhibit B hereto attached and made a part hereof.

2. That Culberson Motor Lines, Inc., file with the Commission evidence of insurance coverage, a tariff of rates and charges, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin operations under the authority herein granted within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1414 — Culberson Motor Lines, Inc.
P. O. Box 157
Moncure, North Carolina

Irregular Route Common Carrier

EXHIBIT B — Transportation of plywood and veneer between all points and places within the State of North Carolina

DOCKET NO. T-342, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of East Coast Transport Company, Incorporated, P. O. Box 1296, Goldsboro, North Carolina) ORDER

HEARD IN: The Hearing Room of the North Carolina Utilities Commission, Raleigh, North Carolina, on October 29, 1968

BEFORE: Harry T. Westcott, Chairman (Presiding), and Commissioners Thomas R. Eller, Jr., John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
Attorneys at Law
108 Commerce Place
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

WESTCOTT, CHAIRMAN: These proceedings arise on application of East Coast Transport Company, Incorporated, and five other common carriers, which were by stipulation consolidated for hearing and record (with separate orders to issue), for authority to transport Group 21 (Other Specific Commodities); namely, fertilizer, fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution in bulk and in bags, dry and liquid between Hertford County and all points and places within the State of North Carolina. At the call of the case for hearing, applicant requested and, with the consent of protestant, was allowed to amend its application as follows:

> The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

Before the introduction of evidence by either of the parties of record, protestant, Chemical Leaman Tank Lines, Inc., sought and was granted authority to withdraw from the case as a protestant; whereupon applicant offered evidence in support of its application.

Having considered all evidence adduced on all material issues arising in the proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Farmers Chemical Association of Tyner, Tennessee, has been engaged in the distribution of fertilizer, fertilizer materials, nitric acid, anhydrous ammonia, nitrogen solution, in bulk and in bags, dry and liquid, at points and places within the State of North Carolina.

2. That it is now in the process of constructing a plant at Tunis, Hertford County, North Carolina, for the sale and distribution of the above-named fertilizers and fertilizer materials for which application for transportation thereof is herein made.

3. That it now has constructed a large storage tank from which it will deliver said materials from the origin point of Tunis to points and places in North Carolina pending the

completion of its manufacturing facilities in the fall of 1969.

4. That Farmers Chemical is in need of transportation now and will need in the future the service of common carriers to transport its products between points and places within the State of North Carolina.

5. That East Coast Transport Company, Incorporated, is certificated by this Commission to engage in the transportation of property by motor carrier in the manner set forth in its Common Carrier Certificate No. C-156.

6. That East Coast Transport Company, Incorporated, has the equipment, is financially able and otherwise qualified to engage in the transportation of property in the manner sought by the instant application.

7. That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and that the applicant is fit, willing and able to properly perform the proposed service on a continuing basis.

CONCLUSIONS

The evidence before the Commission tends to show that the use of liquid fertilizer and fertilizer materials and other commodities sought by the applicant herein is increasing each year; that a peak in the movement of these properties develops in the months of April, May and June, the season when such materials are generally used by the farmers of North Carolina; that there is a demand and need for service of the applicant by the shippers and receivers of the commodities sought to be transported. We are therefore of the opinion and conclude that the evidence in this case supports the granting of the authority sought by the applicant.

IT IS THEREFORE ORDERED That Common Carrier Certificate No. C-156 issued by this Commission to East Coast Transport Company, Incorporated, Goldsboro, North Carolina, be amended so as to authorize the additional authority granted as set forth in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That a copy of this order be transmitted to East Coast Transport Company, Incorporated, and to the attorney for the applicant.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-342, SUB 6

East Coast Transport Company, Incorporated
P. O. Box 1296
Goldsboro, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

DOCKET NO. T-1347, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Sam Eller, d/b/a Sam D. Eller Motor Carrier, Box 8, Sparta Road, North Wilkesboro, North Carolina, for Authority to Transport Group 21, Mobile Homes Within Ashe, Alleghany, Surry, Yadkin, Iredell, Alexander, Caldwell and Watauga Counties) ORDER GRANTING APPLICATION AS AMENDED

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on September 10, 1968, at 10 A.M.

BEFORE: Commissioners Clawson L. Williams, Jr. (Presiding), M. Alexander Biggs, Jr. and Thomas R. Eller, Jr.

APPEARANCES:

For the Applicant:

Ralph Davis, Esq.
Attorney at Law
P. O. Box 426
North Wilkesboro, North Carolina

For the Protestants:

Charles B. Morris, Jr., Esq.
Jordan, Morris & Hoke
Attorneys at Law
P. O. Box 1606, Raleigh, North Carolina
For: Transit Homes, Inc.

Earl W. Vaughan, Esq.
Vaughan & Harrington

Attorneys at Law
109 West Washington Street
Eden, North Carolina
For: Morgan Drive Away, Inc.

WILLIAMS, COMMISSIONER: By application filed with the Commission on June 3, 1968, Sam Eller, d/b/a Sam D. Eller Motor Carrier (Applicant), North Wilkesboro, North Carolina, seeks authority to amend his Certificate No. C-910 to include authority to transport as an irregular route common carrier mobile homes from points and places within Ashe, Alleghany, Surry, Yadkin, Iredell, Alexander, Caldwell and Watauga Counties to all points and places in North Carolina and from all points and places in North Carolina to points and places within the named counties.

Notice of said application, together with a description of the authority sought was published in the Commission Calendar of Hearings issued on July 16, 1968. Within apt time, protests and motions to intervene were filed by Transit Homes, Inc. and Morgan Drive Away, Inc.

The hearing was held at the time and place shown in the caption and all parties were present and represented by counsel as shown in the caption. At the outset of the hearing, counsel for the applicant moved to amend the application to include only the Counties of Ashe and Alleghany and to omit therefrom the Counties of Surry, Yadkin, Iredell, Alexander, Caldwell and Watauga. Protestants had no objection to the motion to amend and the Commission, in its discretion, allowed the amendment.

Counsel for all protestants stated for the record that in view of the amendment they had no objections to the application as amended and stated for the record and moved to withdraw their protests. Such motion was allowed.

Applicant offered evidence tending to show that applicant resides in North Wilkesboro, Wilkes County, North Carolina, and is engaged in the business of transporting mobile homes under authority granted by this Commission contained in Common Carrier Certificate No. C-910 from points and places in Wilkes County to all points and places in North Carolina and from all points and places in North Carolina to Wilkes County; that there is a public need and demand for additional services upon the applicant which he is unable to meet due to the limitations of his present authority and there is public need and demand for his services from Ashe and Alleghany Counties to points and places in North Carolina and from points and places in North Carolina to Ashe and Alleghany Counties; that applicant is ready, willing and able, financially and otherwise, to furnish such services on a continuing basis; that the present service available to the public within said territory is not adequate and there is public need for additional services of the type applied for herein.

Upon consideration of the application and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That the applicant is fit, ready, willing and able, financially and otherwise, to properly perform the services proposed by the amended application and is presently engaged in the business of transporting mobile homes under the authority contained in his Certificate No. C-910.

2. That public convenience and necessity requires the proposed services in addition to existing authorized transportation service for the irregular route transportation of mobile homes in Ashe and Alleghany Counties; Ashe and Alleghany Counties adjoin Wilkes County, where applicant presently operates.

3. That the applicant is solvent and is financially able to provide the proposed services in a satisfactory manner on a continuing basis.

CONCLUSIONS

Based upon the record in this docket, it is the conclusion of the Commission that the applicant has carried the burden of proof required for the granting of the authority sought and such authority should be granted. There was sufficient evidence presented by the applicant that public convenience and necessity requires the authority sought by the applicant in his amended application.

IT IS, THEREFORE, ORDERED That the application as amended of Sam Eller, d/b/a Sam D. Eller Motor Carrier, is hereby granted and Certificate No. C-910 is hereby amended to include the authority shown by the amended application and more particularly described in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That Sam Eller d/b/a, Sam D. Eller Motor Carrier, file with the Commission a tariff of rates and charges, evidence of required insurance, list of equipment, designation of process agent, and otherwise comply with the rules and regulations of the Commission and institute operations under authority herein granted within thirty (30) days after the date this Order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1347, SUB 2	Sam Eller, d/b/a Sam D. Eller Motor Carrier Box 8, Sparta Road North Wilkesboro, North Carolina
EXHIBIT B	Transportation of Group 21, mobile homes between all points and places in Ashe and Alleghany Counties and from points and places in Ashe and Alleghany Counties to all points and places in North Carolina and from all points and places in North Carolina to Ashe and Alleghany Counties over irregular routes.

DOCKET NO. T-1112, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of James A. Ezzell, t/a Ezzell Farms, Route 1, Magnolia, North Carolina) RECOMMENDED ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on Tuesday, July 30, 1968, at 9:30 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Protestant:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina
For: Eastern Motor Lines, Inc.

HUGHES, EXAMINER: By application filed with the Commission on May 31, 1968, James A. Ezzell, t/a Ezzell Farms, Route 1, Magnolia, North Carolina, seeks authority to engage in the transportation, as an irregular route common carrier, of Group 2, Heavy Commodities; Group 7, Cotton in Bales, and Group 10, Building Materials, between points and places on and east of U. S. Highway 1, and between points and places on and east of U.S. Highway 1 on the one hand and

points and places in the State on the other. Notice of said application with a description of the rights sought, along with the time and place of hearing was published in the Commission's Calendar of Hearings issued on June 6, 1968.

Protests thereto was timely filed by Eastern Motor Lines, Inc., Warrenton, North Carolina.

Each of the parties together with counsel was present at the hearing.

The evidence for the applicant shows that he is presently engaged in the trucking business under Certificate No. C-792, heretofore issued to him by this Commission; that he owns ten (10) tractors and ten (10) trailers; that he is familiar with the rules and regulations of the Commission; that he is in a position financially and has adequate equipment to provide the service proposed in his application and that said application was prompted by requests from certain shippers for the type of service applied for.

The portion of the application requesting authority to haul Group 2, Heavy Commodities, is supported by three public witnesses. Mr. F. J. Faison, Jr., of Van Industries, Clinton, North Carolina, manufacturer of tobacco processing equipment, testified that the service is needed for the transportation of equipment consisting of tobacco harvesters and tobacco tying machines which are now necessarily being transported in private carriage for the reason that Van Industries has been unable to locate a common carrier who would provide the service. Mr. Harold Cook, Clinton, North Carolina, manufacturer of sawmill equipment, testified that such equipment is shipped to various points in North Carolina; that said shipments are very bulky, irregular in size, weigh up to 20,000 pounds and are some thirty (30) feet long; that he had been unable to locate an authorized carrier who is interested in doing the hauling, and that there is a real need for the service proposed by Applicant. Mr. Ernest Wells, Clinton, North Carolina, testified that he is in the construction business and operates bulldozers and draglines; that he has need of a carrier to haul them; that he has been moving them himself, but that he has found that this is not feasible because of the expense involved; that he knows of no carrier closer than Charlotte who can perform the service for which he has a real need.

The application for building materials is partially supported by one witness, Mr. Craig Howard of the Crumpler Brick and Tile Company, of Salemburg, North Carolina. Mr. Howard testified that his company manufactures clay drainage tile which is shipped with accessories, including "starter pipes" and coverage for joints; that flue liners and fibre glass tile guards are also shipped by his firm, and that these accessory items are the only regulated building materials for which transportation is really needed.

There was no public testimony in support of that portion of the application which seeks authority to engage in the transportation of Group 7, Cotton in Bales.

Evidence presented by the Protestant, Eastern Motor Lines, Inc., consisted of testimony by its President, Mr. W. S. Bugg, who testified that his firm holds intrastate authority from this Commission to engage in the transportation of Group 10, Building Materials, on a statewide basis; that his firm has idle equipment and could use more business; that he solicits the entire State, has never refused service to anyone and would station equipment in Clinton, if requested.

Parties waived the filing of briefs.

Upon consideration of the application, the testimony of record, and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That public convenience and necessity requires the service proposed as it relates to Group 2, Heavy Commodities in addition to existing authorized transportation service.

2. That public convenience and necessity does not require the service proposed as it relates to Group 10, Building Materials, except specific commodities, limited to flue liners and certain accessory items required for the installation of clay drainage tile, said items being described as tile starter pipe, coverage for joints and fibre glass tile guard.

3. That a public demand and need has not been shown for that portion of the application which seeks authority to transport Group 7, Cotton in Bales.

4. That the applicant is fit, willing and able to properly perform the proposed service.

5. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Upon consideration of the evidence presented and the facts found, the Hearing Examiner finds and concludes that Applicant has satisfied the burden of proof required for the granting of the authority sought as it relates to Group 2, Heavy Commodities, and certain specific commodities related to building materials; namely, flue liners and certain accessory items used in the installation of drainage tile, said items being described as tile starter pipes, coverage for joints and fibre glass tile guards, and that said application limited to these commodities should be granted.

Other than the uncorroborated testimony of the applicant, no evidence was presented which would indicate a need for the transportation of Group 7, Cotton in Bales, and Group 10, Building Materials. In the absence of the required proof of a public demand and need for the transportation of these commodities, the Hearing Examiner is of the opinion and concludes that the application as it relates to such commodities, except for the specific items of building materials referred to in the next preceding paragraph, should be denied.

IT IS, THEREFORE, ORDERED That the application of James A. Ezzell, t/a Ezzell Farms, Route 1, Magnolia, North Carolina, for authority to engage in the transportation of Group 2, Heavy Commodities, and certain specific items of building materials be, and the same is, hereby granted and that Applicant be issued a certificate including the authority particularly described in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That in all other respects, the application be, and the same is, hereby denied.

IT IS FURTHER ORDERED That James A. Ezzell, t/a Ezzell Farms, Route 1, Magnolia, North Carolina, file with the Commission a tariff of rates and charges and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1112 SUB 1

James A. Ezzell, t/a
Ezzell Farms
Route 1
Magnolia, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

1. Group 2, Heavy Commodities, between points and places on and east of U.S. Highway 1, and between points and places on and east of U.S. Highway 1 on the one hand and points and places west of U.S. Highway 1 on the other.

2. Starter pipes, coverage for joints, fibre glass tile guards and other regulated accessory items required for the installation of clay drainage tile, and flue liners between points

and places on and east of U.S. Highway 1, and between points and places on and east of U.S. Highway 1 on the one hand and points and places west of U.S. Highway 1 on the other.

DOCKET NO. T-1436

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Fleet Transport Company, Inc., 340 Armour Drive, N. E., Atlanta, Georgia 30324) ORDER)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on October 29, 1968

BEFORE: Harry T. Westcott, Chairman (Presiding), and Commissioners Thomas R. Eller, Jr., John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
Attorneys at Law
108 Commerce Place
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

WESTCOTT, CHAIRMAN: These proceedings arise on application of Fleet Transport Company, Inc., Atlanta, Georgia, and five other common carriers, which were by stipulation consolidated for hearing and record (with separate orders to issue), for authority to transport Group 21 (Other Specific Commodities); namely, fertilizer, fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution in bulk and in bags, dry and liquid between Hertford County and all points and places within the State of North Carolina. At the call of the case for hearing, applicant requested and, with the consent of protestant, was allowed to amend its application as follows:

The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places

in Hertford County and all points and places within the State of North Carolina.

Before the introduction of evidence by either of the parties of record, protestant, Chemical Leaman Tank Lines, Inc., sought and was granted authority to withdraw from the case as a protestant; whereupon applicant offered evidence in support of its application.

J. D. Fetz, Vice President in Charge of Sales and Traffic of applicant company, presented testimony to the effect that applicant is a corporation, incorporated under the laws of the State of Georgia and operating in intrastate commerce in the States of Tennessee, Alabama, Florida, and Georgia in the transportation of liquid commodities; that it has interstate authority in over 17 states for most of these commodities; that it is primarily a petroleum hauler but transports fertilizer, anhydrous ammonia and nitric acid; that it has operated in interstate commerce through and into North Carolina since 1957; that it has transported commodities for Farmers Chemical Association of Tyner, Tennessee.

Attached to the application as Exhibit C is a list of equipment which would be used in North Carolina. Applicant further testified that his company could add to this equipment or delete, as the need arises. Also attached to the application as Exhibit D is a financial statement of applicant showing that applicant is solvent financially and has substantial working capital.

Having considered all evidence adduced on all material issues arising in the proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Farmers Chemical Association of Tyner, Tennessee, has been engaged in the distribution of fertilizer, fertilizer materials, nitric acid, anhydrous ammonia, nitrogen solution, in bulk and in bags, dry and liquid, at points and places within the State of North Carolina.

2. That it is now in the process of constructing a plant at Tunis, Hertford County, North Carolina, for the sale and distribution of the above-named fertilizers and fertilizer materials for which application for transportation thereof is herein made.

3. That it now has constructed a large storage tank from which it will deliver said materials from the origin point of Tunis to points and places in North Carolina pending the completion of its manufacturing facilities in the fall of 1969.

4. That Farmers Chemical is in need of transportation now and will need in the future the service of common carriers to transport its products between points and places within the State of North Carolina.

5. That Fleet Transport Company, Inc., is a corporation, incorporated under the laws of the State of Georgia; that it has interstate authority in over 17 states for most of these commodities and has operated in interstate commerce through and into North Carolina since 1957; that it has transported commodities for Farmers Chemical Association of Tyner, Tennessee.

6. That Fleet Transport Company, Inc., has the equipment, is financially able and otherwise qualified to engage in the transportation of property in the manner sought by the instant application.

7. That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and that the applicant is fit, willing and able to properly perform the proposed service on a continuing basis.

CONCLUSIONS

The evidence before the Commission tends to show that the use of liquid fertilizer and fertilizer materials and other commodities sought by the applicant herein is increasing each year; that a peak in the movement of these properties develops in the months of April, May and June, the season when such materials are generally used by the farmers of North Carolina; that there is a demand and need for service of the applicant by the shippers and receivers of the commodities sought to be transported. We are therefore of the opinion and conclude that the evidence in this case supports the granting of the authority sought by the applicant.

IT IS THEREFORE ORDERED That Fleet Transport Company, Inc., Atlanta, Georgia, be issued a certificate of public convenience and necessity authorizing the transportation by it, as an irregular route common carrier, of the commodities set forth and described in Exhibit B attached hereto and made a part hereof.

IT IS FURTHER ORDERED That a certificate be issued and operations thereunder be commenced only when applicant has furnished evidence of insurance coverage, filed tariff schedules of rates and charges, and otherwise complied with the rules and regulations of the Commission not later than thirty (30) days from the date of this order.

IT IS FURTHER ORDERED That a copy of this order be transmitted to Fleet Transport Company, Inc., and to the attorney for the applicant.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1436 Fleet Transport Company, Inc.
340 Armour Drive, N. E.
Atlanta, Georgia 30324

Irregular Route Common Carrier Authority

EXHIBIT B The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

DOCKET NO. T-645, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Fredrickson Motor Express) RECOMMENDED
Corporation, 3400 N. Graham Street, Charlotte,) ORDER
North Carolina)

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on February 20, 1968, at 10:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

No Protestants:

HUGHES, EXAMINER: By application filed with the Commission on November 10, 1967, Fredrickson Motor Express Corporation (Applicant), 3400 N. Graham Street, Charlotte, North Carolina, seeks to serve the Plant Site of Superior

Cable Corporation, located approximately 6.2 miles north of Terrell, North Carolina, as an off-route point as follows:

"(1) From the junction of North Carolina Highway 150 and County Road 1848 at Terrell, North Carolina thence over County Road 1848 approximately 5.8 miles to junction unnumbered road, thence over unnumbered road approximately 1 mile to plant site of Superior Cable Corporation.

"(2) From the junction of North Carolina Highway 10 and County Road 1848 approximately two miles south of Catawba, North Carolina thence over County Road 1848 approximately three miles to junction of unnumbered road, thence over unnumbered road approximately 1 mile to plant site of Superior Cable Corporation."

Applicant further seeks by this application authority to engage in the transportation of general commodities, except those requiring special equipment in interstate or foreign commerce, as hereinabove described, under the provisions of Section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962 [49 USCA 306(a)(6)].

Applicant operates as a motor carrier of general commodities, with exceptions, over regular routes solely within the State of North Carolina and is not controlled by, controlling, or under common control with any carrier engaged in operations outside North Carolina.

The application is unopposed.

The record of evidence in support of the application tends to show that notice to interested persons engaged in intrastate commerce was published in a Calendar of Hearings issued November 15, 1967; that appropriate notice was forwarded to the Interstate Commerce Commission for publication and was published in the Federal Register under date of November 29, 1967, of the desire of Applicant for concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought and that reasonable opportunity was given any interested person to protest and to be heard and, as hereinabove shown, no one filed protest nor was anyone present at the hearing in opposition to the granting of the authority sought.

In support of its application, Applicant offered by reference the records of the Commission, which include its present intrastate authority, its lists of equipment on file with the Commission, its latest annual report filed with the Commission, and exhibits attached to the application, which, among other things, tend to disclose the assets and liabilities of Applicant. In addition, Applicant offered by reference the testimony of Mr. Mark Carswell, Traffic Manager of Superior Cable Corporation, which firm is in the process of completing a newly constructed plant at a site near Sherrills Ford. Witness said in substance that the new

plant which will process copper cable for closed circuit T.V. and community antenna T. V. systems will contain one hundred thousand square feet of space; that cable production at the plant will be shipped to all points in North Carolina as well as points outside the State of North Carolina; that some of the materials will move into the plant by truck and that more than ninety percent (90%) of the outbound shipments will be by motor carrier and that the average shipment will be between one thousand and three thousand pounds. The witness further testified that production at the plant should reach over one million pounds per month; that both interstate and intrastate motor carrier service to and from the plant will be required and that the service of Applicant will be needed in addition to that of other carriers who are either already authorized to serve the point or have applications pending.

The Hearing Examiner has duly considered the application for authority to engage in the transportation of general commodities, heretofore described, in intrastate commerce as well as interstate and foreign commerce and makes the following

FINDINGS OF FACT

1. That public convenience and necessity does now and will in the future require the proposed service in addition to existing authorized transportation service.

2. That public convenience and necessity requires that the carrier authorized to engage in intrastate operations also be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized to be conducted.

3. That the applicant is fit, willing and able to properly perform the proposed service.

4. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

The application in this cause was filed under the provisions of North Carolina General Statute 62-262 and Section 206(a)(6) of the Interstate Commerce Act, as amended [49 USCA 306(a)(6)]. The evidence of record is conclusive that the present and future public convenience and necessity requires operation by Applicant as a common carrier by motor vehicle transporting general commodities, with exceptions hereinafter noted.

IT IS, THEREFORE, ORDERED That Applicant's intrastate Common Carrier Certificate No. C-1 be amended to include the authority set forth in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED That the applicant cause to be amended its tariffs on file with this Commission so as to indicate to the shipping and receiving public its authorization to render service within the territory herein granted by this Commission.

IT IS FURTHER ORDERED That Applicant be, and it is, hereby authorized to file with the Interstate Commerce Commission a copy of this order as evidence for a certificate of registration in accordance with the provisions of Section 206(a)(6) of the Interstate Commerce Act, as amended [49 USCA 306(a)(6)] relating to registration of state motor carrier certificates.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of February, |968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-645
SUB ||

Fredrickson Motor Express Corporation
3400 N. Graham Street
Charlotte, North Carolina

EXHIBIT A

Regular Route Common Carrier Authority

Transportation of Group |, General Commodities, except those requiring special vehicles or special equipment for hauling, loading, or unloading, or any special or unusual service in connection therewith, as follows:-

|. Serving the Plant Site of Superior Cable Corporation, located on Catawba County Road |848 approximately 6.2 miles north of Terrell, North Carolina, as an off-route point from applicant's presently authorized route over N. C. Highway |50.

2. Serving the Plant Site of Superior Cable Corporation located on County Road |848 approximately 5 miles south of Catawba, North Carolina, as an off-route point from applicant's presently authorized route over N. C. Highway |0.

DOCKET NO. T-|4|7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Guignard Trucking Company, Inc., 2508 Starita Road, Charlotte, North Carolina) RECOMMENDED ORDER)

HEARD IN: The Offices of the Commission, Raleigh, North Carolina, January 16, 1968, at 10 a.m.

BEFORE: Chairman Harry T. Westcott

APPEARANCES:

For the Applicant:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

No Protestants.

WESTCOTT, CHAIRMAN: In this cause the above-captioned applicant seeks authority to transport Group 6, Agricultural Commodities, between points and places throughout the State of North Carolina. In support of the application the documentary and oral evidence tends to show that applicant is a North Carolina corporation with its principal offices in Charlotte, North Carolina; that the stockholders of applicant company own and operate Northeastern Trucking Company; that applicant has years of experience in the trucking business, has the equipment and is financially able to perform the services for which application is made.

Joseph E. McGee, a produce broker residing in the City of Raleigh, North Carolina, who uses both interstate and intrastate motor carriers in the transportation of fruits and vegetables, testified that he had experienced difficulty in the transportation of fruits and vegetables from the primary markets in North Carolina to the secondary markets, such as from Elizabeth City to Charlotte and Asheville, and from Boone and North Wilkesboro to Charlotte, Asheville and Raleigh, and that there is a definite need for the services of applicant and that he would use same.

Witness McGee further testified that he knew of his own knowledge that other produce brokers in North Carolina with whom he has been associated need the service of a carrier to transport agricultural commodities between points and places in North Carolina.

Howard Biggers, Sr., by affidavit, represents that he is president of Biggers Brothers, Inc., of Charlotte, North Carolina; that his company is primarily engaged in the produce business and buys and sells approximately 780 truck loads of various produce per year; that he is familiar with the application of applicant, has known the operators of applicant company for many years and has used their service in their allied freight business and found it to be very satisfactory; that his company has a need for the proposed transportation service in addition to that now existing and fully supports the application herein.

No protests were filed and no one appeared in opposition to the granting of the authority herein sought.

FINDINGS OF FACT

In consideration of the evidence adduced, the Hearing Commissioner is of the opinion and finds:

1. That there is a demand and need for the proposed service in addition to existing authorized service.

2. That the applicant is fit, willing and able to properly perform the proposed service.

3. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Agricultural commodities from farm to market are exempt by statute. Some few of the commodities sought to be transported under the Group 6 classification are exempt by Administrative Orders of this Commission; however, the transportation of agricultural commodities from the primary markets, such as auction markets or packing houses, to wholesale distributors in other instances are regulated. It is this category of agricultural products that applicant seeks to transport by this application, together with authorization to transport the other commodities listed under Group 6.

Transporters of agricultural commodities, from the economic point of view, are interested in long hauls in interstate commerce. Ofttimes difficulty is experienced by shippers in obtaining transportation for short hauls. It is this type of transportation service that applicant seeks by this application and proposes to hold itself out to render. The Hearing Commissioner is of the opinion and concludes that the instant application should be granted.

WHEREFORE, IT IS ORDERED That the application of Guignard Trucking Company, Inc., to transport Group 6, Agricultural Commodities, in intrastate commerce in North Carolina, be and the same is hereby approved.

IT IS FURTHER ORDERED That a certificate be granted to Guignard Trucking Company, Inc., authorizing the transportation of commodities set forth in Exhibit B attached hereto and made a part hereof as a common carrier in intrastate commerce in North Carolina.

IT IS FURTHER ORDERED That applicant file with this Commission appropriate tariffs, evidence of appropriate insurance, list of equipment, and otherwise comply with the rules and regulations of this Commission, and begin operation under the authority herein granted within thirty (30) days of the effective date of this order.

IT IS FURTHER ORDERED That a copy of this order be transmitted to the applicant and to the attorney for the applicant.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of January, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1417 Guignard Trucking Company, Inc.
Irregular Route Common Carrier
2508 Starita Road
Charlotte, North Carolina

EXHIBIT B The transportation of Group 6, Agricultural Commodities, over irregular routes, between points and places throughout the State of North Carolina. This group includes unmanufactured farm, dairy, and orchard products, including wheat, corn, oats, peanuts, potatoes, melons, fruits, vegetables, cotton seed, cotton seed meal and hulls, seeks, feeds, poultry, eggs, and other farm produce. This group includes cotton in bales and leaf tobacco from farms to market but does not include cotton in bales as defined in Group 7, nor does it include leaf tobacco and accessories as defined in Group 19.

DOCKET NO. T-151, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of H & P Transit Company, 518 E. Park Street, P. O. Box 1456, Kinston, North Carolina) RECOMMENDED ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on March 28, 1968, at 10:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

For the Protestants:

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
Attorneys at Law
P. O. Box 2307
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

Thomas W. Steed, Jr.
Allen, Steed, & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: Central Transport, Inc.
Kenan Transport Company
Public Transport Corporation

John D. McConnell, Jr. and
J. Mac Boxley
Broughton & Broughton
Attorneys at Law
P. O. Box 2715, Raleigh, North Carolina
For: Bulk Haulers, Inc.

HUGHES, EXAMINER: By application filed with the Commission on February 14, 1968, H & P Transit Company (Applicant), 518 East Park Street, P. O. Box 1456, Kinston, North Carolina, seeks irregular route common carrier authority to engage in the transportation of liquid fertilizer materials and nitrogen solutions, in bulk in tank trucks, from points and places on and east of U.S. Highway 15 to all points in North Carolina.

Notice of said application, together with a description of the authority sought, along with the time and place of hearing was published in the Commission's Calendar of Hearings issued February 15, 1968. Within apt time, protests thereto were filed by Bulk Haulers, Inc., Wilmington, North Carolina; Central Transport, Inc., High Point, North Carolina; Kenan Transport Company, Durham, North Carolina; Public Transport Corporation, Troutman, North Carolina, and Chemical Leaman Tank Lines, Inc., Greensboro, North Carolina. At the call of the case, all parties were present or represented by counsel.

The evidence in support of the application tends to show that Applicant presently holds authority to engage in the transportation of liquid fertilizer materials and nitrogen solutions, in bulk in tank trucks, over irregular routes between points and places on and east of U.S. Highway 15, which authority was acquired by purchase, the same being approved by the Commission in its order of July 25, 1966; that Applicant has nine (9) tank trucks (some of which are leased) suitable for transporting the commodities applied for; that Applicant is presently hauling said commodities under its existing authority and has been called upon from time to time to trip lease its trucks to another carrier for

movements to the area sought in this application, and that Applicant's origin point is primarily Rocky Mount for the account of two shippers; namely, Allied Chemical Corporation and Planters Industries, Inc.

Shipper witnesses testifying in support of the application were Mr. R. T. Martin, of Allied Chemical Corporation, and Mr. V. L. Jackson, of Planters Industries, Inc. Witness Martin testified that his company has established distribution points in Rocky Mount, Goldsboro, Fayetteville, New Bern and Lexington with storage facilities for one million gallons of the involved commodities at each location; that during peak periods in the Spring and Fall, his company needs every carrier and every piece of equipment it can get to supply the demands of its customers; that there is a need for additional service from the distribution point at Rocky Mount to points west of Highway 15; that his company will continue to use the services of other carriers and in his opinion a grant of the authority applied for will not take any business away from existing carriers; that the limited authority which Applicant now holds which prohibits movements west of U.S. Highway 15 presents a service problem and that his company has lost customers as a result of not having sufficient equipment available at Rocky Mount. Witness Martin further stated that while he could foresee a need for the service applied for from other origin points east of U.S. Highway 15, his interest at this time appears to be in obtaining a more adequate service out of Rocky Mount to the destination area applied for. The witness further stated that he has used the service of Applicant and that such service has been satisfactory. Witness Jackson testified, generally, about transportation problems in connection with the movement of liquid fertilizer, particularly during peak periods; that the use of the commodity is increasing and that shippers need better transportation. Mr. Jackson stated, however, that he only serves one point in the territory applied for, the same being Bahama, which is located in Durham County just a few miles west of said Highway 15.

Protestants contend, among other things, that the service proposed by Applicant is in the area and territory and between points that are now adequately served by existing carriers; that there is no need for the additional service; that the proposed service will adversely affect the service now rendered by Protestants; that the proposed service will burden the public and that such service will be inconsistent with the public interest and the transportation policy declared in the Public Utilities Act of 1963.

Protestants offered the testimony of Mr. W. H. Kinball, of Kenan Transport Company, Mr. D. B. Green, of Chemical Leaman Tank Lines, Inc., and Mr. L. Franklin Jones, of Bulk Haulers, Inc. Each of the witnesses testified that they had idle equipment which could be used for the transportation of the involved commodities from origin points east of Highway 15 to any point in the State; however, it appears from their

testimony that none of the companies they represent are presently transporting such commodities from Rocky Mount to points west of U.S. Highway 15. No testimony was given in behalf of the other protesting carriers.

Filing of briefs was waived by all parties.

Upon consideration of the application, testimony of record and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That public convenience and necessity does not require the service as applied for, but that public convenience and necessity does require the proposed service from Rocky Mount to points and places west of U.S. Highway 15.

2. That the applicant is fit, willing and able to perform such service, and

3. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

It appears that during the peak seasons in the Spring and Fall of the year, the demand for liquid fertilizer materials and nitrogen solutions has increased to such an extent that it is most difficult with existing facilities to supply the needs of the consumers during the relatively short planting season. Evidence of Applicant leasing its equipment to another carrier for transportation to points outside its present territory indicates that the shortage of equipment is especially true, as it relates to such transportation from Rocky Mount to points west of U.S. Highway 15. Evidence that one of the protesting carriers is required to bring in some eighteen (18) tractors and trailers from another state to augment its North Carolina based vehicles during these peak periods confirms the shortage of equipment, and additional evidence that one of the supporting shippers uses all certificated carriers and still is unable to satisfy its customers from Rocky Mount further substantiates the fact that there is a shortage of service available at Rocky Mount by existing authorized carriers for the transportation of these commodities.

Based upon the application, the evidence presented in this case and the foregoing findings of fact, the Hearing Examiner concludes that public convenience and necessity require the service proposed from Rocky Mount to points and places within the State of North Carolina, west of U.S. Highway 15.

IT IS, THEREFORE, ORDERED That Common Carrier Certificate No. C-296, heretofore issued to H & P Transit Company, P. O.

Box 1456, Kinston, North Carolina, be, and the same is, hereby amended to include the authority more particularly described and limited in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That the application in all other respects be denied.

IT IS FURTHER ORDERED That H & P Transit Company file a tariff of rates and charges and otherwise comply with the rules and regulations of this Commission and begin operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-151 SUB 8
H & P Transit Company
518 East Park Street
P. O. Box 1456
Kinston, North Carolina

EXHIBIT B

Irregular Route Common Carrier Authority

Transportation of Group 21, Liquid Fertilizer Materials and Nitrogen Solutions, in bulk in tank trucks from Rocky Mount to points and places within the State of North Carolina, west of U.S. Highway 15.

DOCKET NO. T-151, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of H & P Transit Company, Kinston, North Carolina, for an extension of operating authority) ORDER DISMISSING APPLICATION

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on January 16, 1968

BEFORE: Chairman H. T. Westcott, Commissioners Thomas R. Eller, Jr., and John W. McDevitt, Presiding

APPEARANCES:

For the Applicant:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

For the Protestants:

Thomas W. Steed, Jr.
Allen, Steed and Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: A. F. Comer Transport Service, Inc.
Maybelle Transport Company, Inc.
Public Transport Corporation
Central Transport, Inc.

James B. Wolfe, Jr.
Cannon, Wolfe and Coggin
Attorneys at Law
108 Commerce Place
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

John D. McConnell, Jr.
Broughton and Broughton
Attorneys at Law
P. O. Box 2715, Raleigh, North Carolina
For: Bulk Haulers, Inc.

McDEVITT, COMMISSIONER: H & P Transit Company (Applicant), 518 E. Park Street, P. O. Box 1456, Kinston, North Carolina, holder of North Carolina Intrastate Common Carrier Certificate C-296, filed application on September 18, 1967, for irregular route common carrier authority as follows:

> Group 21, to extend the authority to transport "liquid fertilizer materials and nitrogen solutions, in bulk in tank trucks, over irregular routes, between points and places on and east of U.S. Highway 15" to the transportation of liquid fertilizer materials and nitrogen solutions, in bulk in tank trucks, over irregular routes, between all points in North Carolina.

Public hearing was scheduled and held as captioned. Protests and Motions to Intervene were filed by attorneys for A. F. Comer Transport Service, Inc.; Maybelle Transport Company, Inc.; Public Transport Corporation; Central Transport, Inc.; Chemical Leaman Tank Lines, Inc.; and Bulk Haulers, Inc. The Applicant and Protestants were present at the hearing and were represented by counsel.

Applicant offered only one witness, its President, James H. Hartis, who testified that Applicant has equipment and financial resources to perform the proposed service; that it has authority under Certificate C-296 to transport liquid fertilizer materials and nitrogen solutions between points and places in North Carolina on and east of U.S. Highway 15; that the purpose of this application is to extend operations to more effectively utilize equipment and better serve shippers; that Applicant has not solicited shippers west of U.S. Highway 15 and is unable to obtain shipper support of

this application; that Applicant made a survey of available carriers and shippers but was unable to obtain figures to support its survey; that it has not been able to accept proferred shipments to points west of U.S. Highway 15.

At the conclusion of Witness Hartis' testimony, counsel for the Applicant was permitted to amend its application as follows:

Transportation of liquid fertilizer materials and nitrogen solutions in bulk in tank trucks, over irregular routes: (1) between points and places in North Carolina on and east of U.S. Highway 15, and (2) from points and places in North Carolina on and east of U.S. Highway 15 to points and places in North Carolina on and west of U.S. Highway 15.

Counsel for the Protestants moved that the application be dismissed on the grounds that there was no shipper testimony to show public demand and need for the proposed service. The motion was taken under advisement and the Protestants proceeded through testimony of a witness and exhibits to show the availability of franchised carriers who are ready, willing, and able to provide the proposed service.

Based on the evidence, the Commission makes the following

FINDINGS OF FACT

The testimony of Applicant's sole witness, its president, was not supported by corroborating testimony of shipper or other public witnesses.

CONCLUSIONS

The Commission's Rule R2-15 states that, "...if the application is for a certificate to operate as a common carrier, the Applicant shall establish by proof that a public demand and need exists for the proposed service in addition to existing authorized service.... Uncorroborated testimony of the Applicant is generally insufficient to establish public demand and need." The Commission concludes that the Applicant's testimony failed to meet this test and that the motion to dismiss the application should be granted.

IT IS, THEREFORE, ORDERED that the application of H & P Transit Company be, and it is hereby, dismissed without prejudice.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-151, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of H & P Transit Company, P. O. Box 2508, Rocky Mount, North Carolina) ORDER

HEARD IN: The Hearing Room of the North Carolina Utilities Commission, Raleigh, North Carolina, on October 29, 1968

BEFORE: Harry T. Westcott, Chairman (Presiding), and Commissioners Thomas R. Eller, Jr., John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
Attorneys at Law
108 Commerce Place
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

WESTCOTT, CHAIRMAN: These proceedings arise on application of H & P Transit Company and five other common carriers, which were by stipulation consolidated for hearing and record (with separate orders to issue), for authority to transport Group 21 (Other Specific Commodities); namely, fertilizer, fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution in bulk and in bags, dry and liquid between Hertford County and all points and places within the State of North Carolina. At the call of the case for hearing, applicant requested and, with the consent of protestant, was allowed to amend its application as follows:

> The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Herford County and all points and places within the State of North Carolina.

Before the introduction of evidence by either of the parties of record, protestant, Chemical Leaman Tank Lines, Inc., sought and was granted authority to withdraw from the

case as a protestant; whereupon applicant offered evidence in support of its application.

Having considered all evidence adduced on all material issues arising in the proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Farmers Chemical Association of Tyner, Tennessee, has been engaged in the distribution of fertilizer, fertilizer materials, nitric acid, anhydrous ammonia, nitrogen solution, in bulk and in bags, dry and liquid, at points and places within the State of North Carolina.

2. That it is now in the process of constructing a plant at Tunis, Hertford County, North Carolina, for the sale and distribution of the above-named fertilizers and fertilizer materials for which application for transportation thereof is herein made.

3. That it now has constructed a large storage tank from which it will deliver said materials from the origin point of Tunis to points and places in North Carolina pending the completion of its manufacturing facilities in the fall of 1969.

4. That Farmers Chemical is in need of transportation now and will need in the future the service of common carriers to transport its products between points and places within the State of North Carolina.

5. That H & P Transit Company is certificated by this Commission to engage in the transportation of property by motor carrier in the manner set forth in its Common Carrier Certificate No. C-296.

6. That H & P Transit Company has the equipment, is financially able and otherwise qualified to engage in the transportation of property in the manner sought by the instant application.

7. That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and that the applicant is fit, willing and able to properly perform the proposed service on a continuing basis.

CONCLUSIONS

The evidence before the Commission tends to show that the use of liquid fertilizer and fertilizer materials and other commodities sought by the applicant herein is increasing each year; that a peak in the movement of these properties develops in the months of April, May and June, the season when such materials are generally used by the farmers of

North Carolina; that there is a demand and need for service of the applicant by the shippers and receivers of the commodities sought to be transported. We are therefore of the opinion and conclude that the evidence in this case supports the granting of the authority sought by the applicant.

IT IS THEREFORE ORDERED That Common Carrier Certificate No. C-296 issued by this Commission to H & P Transit Company, Rocky Mount, North Carolina, be amended so as to authorize the additional authority granted as set forth in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That a copy of this order be transmitted to H & P Transit Company and to the attorney for the applicant.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-151 SUB 9
H & P Transit Company
P. O. Box 2508
Rocky Mount, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

DOCKET NO. T-521, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, Route 1, Box 306-1-A, Apex, North Carolina) RECOMMENDED ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, June 28, 1968, at 9:30 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Robert L. McMillan, Jr.
Attorney at Law
322 First Federal Building
Raleigh, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on June 4, 1968, Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, Route 1, Box 306-1-A, Apex, North Carolina, seeks to amend Contract Carrier Permit No. P-31 to include authority to engage in the transportation of drugs and other merchandise customarily sold by wholesale and retail drug stores within 150 air miles of Raleigh.

Notice of said application together with the time and place of hearing was given in the Commission's Calendar of Hearings issued on June 6, 1968. The application is unopposed.

The records of the Commission and the evidence offered by Applicant shows that Applicant now holds contract carrier authority to engage in the transportation of drugs, medicines, and such merchandise as is customarily sold by wholesale and retail drug stores from Raleigh to points and places within one hundred miles of Raleigh; that presently, Applicant serves only one (1) shipper; namely, W. H. King Drug Company, Raleigh, North Carolina; that the purpose of this application is to add an additional shipper; namely, N.C. Mutual Wholesale Drug Company, of Durham, and to enlarge the present territorial scope of authority. The evidence further tends to show that Applicant owns three (3) trucks and has a net worth in the amount of $17,000.00; that in the event the application herein is granted, an additional truck will be purchased and that an additional driver will be employed.

The application is supported by a letter from the executive vice president of N.C. Mutual Wholesale Drug Company who feels that the contract arrangement with Applicant will result in an improved service to the customers of his firm. A copy of the contract between Applicant and shipper has been filed with the Commission.

Upon consideration of the application, the testimony of record and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Applicant is the holder of Contract Carrier Permit No. P-31 which he acquired by purchase from J. W. Russell,

d/b/a Russell Trucking Company, said transaction being approved by the Commission in its Order of March 19, 1968.

2. That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act.

3. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates or rail carriers.

4. That the proposed service will not unreasonably impair the use of the highways by the general public.

5. That the applicant is fit, willing and able to properly perform the service proposed as a contract carrier, and

6. That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that Applicant has borne the burden of proof required by statute and that the authority sought should be granted.

IT IS, THEREFORE, ORDERED That Contract Carrier Permit No. P-31 in the name of Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, be, and the same is, hereby amended to conform with Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED That Applicant file with the Commission amended schedule of minimum rates and charges, amended copy of contract with present shipper and otherwise comply with the rules and regulations of the Commission and begin active operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-521 SUB 3

Thomas Oliver Harper, Jr., d/b/a
Harper Trucking Company
Route 1, Box 306-1-A
Apex, North Carolina

Contract Carrier Authority

EXHIBIT A — Transportation of drugs, medicines, and such merchandise as is customarily sold by wholesale and retail drug stores within 150 air miles of Raleigh under contract with W. H. King Drug Company, Raleigh, North Carolina, and N.C. Mutual Wholesale Drug Company, Durham, North Carolina.

DOCKET NO. T-681, SUB 26

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Helms Motor Express, Inc., P. O. Box 951, Albemarle, North Carolina) RECOMMENDED ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, February 1, 1968, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on December 15, 1967, Helms Motor Express, Inc. (Applicant), P. O. Box 951, North Second Street, Albemarle, North Carolina, seeks a certificate of public convenience and necessity authorizing operation in intrastate commerce as a regular route common carrier by motor vehicle of general commodities, except those requiring special equipment, as described in Exhibit A hereto attached.

Applicant further seeks by this application authority to engage in the transportation of general commodities, except those requiring special equipment, in interstate or foreign commerce within the limits as described in said Exhibit A under the provisions of Section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962 [49 USCA 306(a)(6)].

Applicant operates as a motor carrier of general commodities, with exceptions, over regular routes solely within the State of North Carolina, and is not controlled

by, controlling, or under common control with any carrier engaged in operations outside North Carolina.

The record of evidence in support of the application tends to show that notice to interested persons engaged in intrastate commerce was published in a Calendar of Truck Hearings issued by the North Carolina Utilities Commission under date of December 20, 1967; that appropriate notice was forwarded to the Interstate Commerce Commission for publication and was published in the Federal Register under date of December 28, 1967, of the desire of Applicant to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority applied for and that reasonable opportunity was given any interested person to protest and to be heard. No one filed protests nor was anyone present at the hearing in opposition to the granting of the authority sought.

Applicant offered a list of equipment and a financial statement which tends to disclose the assets and liabilities of Applicant. Supporting the application were a number of witnesses including several merchants and manufacturers within the affected area, each of whom offered testimony which tends to show a very definite public need for the proposed service in both intrastate and interstate commerce.

The Hearing Examiner has duly considered the application for authority to engage in interstate and foreign commerce as well as the intrastate application and makes the following

FINDINGS OF FACT

1. That public convenience and necessity does now and will in the future require the proposed service in addition to existing authorized transportation service.

2. That public convenience and necessity requires that the carrier authorized to engage in intrastate operations also be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized to be conducted.

3. That the applicant is fit, willing and able to properly perform the proposed service.

4. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

The application in this cause was filed under the provisions of North Carolina General Statute 62-262 and Section 206(a)(6) of the Interstate Commerce Act, as amended [49 USCA 306(a)(6)]. The evidence of record is conclusive that the present and future public convenience and necessity requires operation by Applicant as a common carrier by motor

vehicle transporting general commodities, with exceptions hereinafter noted.

IT IS, THEREFORE, ORDERED That Applicant's intrastate Common Carrier Certificate No. C-3 be amended to include the authority set forth in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED That the authority herein to the extent that it duplicates any authority heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED That Applicant be, and it is, hereby authorized to file with the Interstate Commerce Commission a copy of this order as evidence for a certificate of registration in accordance with the provisions of Section 206(a)(6) of the Interstate Commerce Act, as amended [49 USCA 306(a)(6)] relating to registration of state motor carrier certificates.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-681 SUB 26

Helms Motor Express, Inc.
Regular Route Common Carrier
P. O. Box 951
Albemarle, North Carolina

EXHIBIT A

Transportation of Group 1, General Commodities, except those requiring special vehicles or special equipment for hauling, loading, or unloading, or any special or unusual service in connection therewith, as follows:

From Mocksville over U.S. Highway 64 to its intersection with County Road 1306, 4 miles west of Mocksville, thence over County Road 1306, 5.6 miles to Iredell County Line, thence over County Road 2126, 3.6 miles to its intersection with N.C. Highway 901, 1.4 miles south of Harmony, thence over N.C. Highway 901 to Harmony and return over same route serving all intermediate points.

From Harmony over N.C. Highway 901 to its intersection with N.C. Highway 115, thence over N.C. Highway 115 to North Wilkesboro, and return over same route, serving all intermediate points.

From North Wilkesboro over N.C. Highway 268 to its intersection with U.S. Highway 321, 6 miles north of Lenoir and return over same route, serving all intermediate points.

From the intersection of U.S. Highway 601 and N.C. Highway 801, 2 miles east of Cooleemee, over N.C. Highway 801 to its intersection with U.S. Highway 158 approximately 12 miles west of Winston-Salem and return over same route, serving all intermediate points.

From intersection of U.S. Highway 64 and County Road 1605, 4 miles east of Mocksville over County Road 1605, 3 miles to its intersection with County Road 1616, thence over County Road 1616, 4.7 miles to its intersection with N.C. Highway 801 at Advance and return over same route, serving all intermediate points.

From the intersection of Highway 901 in Iredell County with County Road 1862, thence over County Road 1862 to its intersection with County Road 1896, and return over the same route, serving all intermediate points.

From the intersection of North Carolina Highway 268 and Wilkes County Road Number 1957, 5.2 miles northeast of North Wilkesboro, thence over County Road Number 1957 to County Road Number 1002 in the Community of Hays, thence over County Road 1002 to its intersection with U.S. Highway 21, and return over same route serving all intermediate points.

NOTE: The authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right.

DOCKET NO. T-1424

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Maxton Oil and Fertilizer) RECOMMENDED
Company, a division of Laurinburg Oil Company,) ORDER
Box 218, Maxton, North Carolina)

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on April 11, 1968, at 10:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on February 23, 1968, Maxton Oil and Fertilizer Company, a division of Laurinburg Oil Company, Box 218, Maxton, North Carolina, seeks authority to operate as a contract carrier by motor vehicle under individual contract with shippers for the transportation of liquid fertilizer, nitrogen solutions, and liquid fertilizer materials between Maxton, North Carolina, and all points in North Carolina.

Notice of the application describing the nature thereof and reflecting the time and place of the hearing was given in the Commission's Calendar of Hearings issued on March 1, 1968. Protest thereto was filed by Chemical Leaman Tank Lines, Inc., Lessee of Ryder Tank Lines, a division of Ryder Truck Lines, Inc. By letter, however, filed with the Commission on April 10, 1968, Protestant, through its attorney, withdrew its protest and the application is unopposed.

It appears from the application and the evidence that Laurinburg Oil Company is a corporation incorporated under the laws of the State of North Carolina; that the names and addresses of the principal managing officers are McNair Evans, President, Laurinburg, North Carolina; Wilbur McRae,

Vice-President - Treasurer, Maxton, North Carolina, and E.H. Evans, Sr., Chairman of Board of Directors, Laurinburg, North Carolina; that in addition to other varied activities, Applicant has storage facilities at Maxton for two million, two hundred thousand gallons of the commodities which Applicant proposes to transport; that such storage facilities are used by Farmers Chemical Association, Inc., and Kaiser Agricultural Chemical Company as a distribution point from which they serve their customers throughout the State; that Applicant is experienced in the transportation of the described commodities as a private carrier and owns eighteen (18) tank trailers of various capacities and six (6) tractors; that Applicant has a net worth in the amount of some $737,000.00 and is fully qualified, financially and otherwise, to acquire the authority sought and conduct operations thereunder.

An executed copy of a contract entered into by and between Applicant and Farmers Chemical Association, Inc., has been filed with the Commission. Said contract provides that the rates and charges for the hauling described therein shall be those as set forth in the tariff published for common carriers by the North Carolina Motor Carriers Association.

It further appears that although the matter of a similar contract with Kaiser Agricultural Chemical Company has been discussed, such a contract has not been agreed upon and Applicant does not seek authority to serve Kaiser at this time.

Upon consideration of the evidence presented, the Hearing Examiner is of the opinion and finds that the evidence presented justifies the following

FINDINGS OF FACT

1. That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act.

2. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates or rail carriers.

3. That the proposed service will not unreasonably impair the use of the highways by the general public.

4. That the applicant is fit, willing and able to properly perform the service proposed as a contract carrier, and

5. That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that Applicant has borne the burden of proof required by statute and that the authority sought should be granted.

IT IS, THEREFORE, ORDERED That a contract carrier permit be granted Maxton Oil and Fertilizer Company, a division of Laurinburg Oil Company, Box 218, Maxton, North Carolina, to engage in the transportation of Group 21, Liquid Fertilizer, nitrogen solutions and liquid fertilizer materials as particularly described in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED That Maxton Oil and Fertilizer Company, a division of Laurinburg Oil Company, file with this Commission schedules of minimum rates and charges, evidence of insurance coverage, lists of equipment designation of process agent and otherwise comply with the rules and regulations of this Commission and begin active operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1424 Maxton Oil and Fertilizer Company, a division of Laurinburg Oil Company
Box 218
Maxton, North Carolina

Contract Carrier Authority

EXHIBIT A Transportation of liquid fertilizer nitrogen solutions, and liquid fertilizer materials between Maxton, North Carolina, and all points in North Carolina under individual contract with Farmers Chemical Association, Inc., of Tyner, Tennessee.

DOCKET NO. T-149, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Maybelle Transport Company, Lexington, North Carolina, to transport Group 21, Cement and Mortar, in packages from Statesville to all points and places in North Carolina and return of refused, damaged, and rejected shipments	) RECOMMENDED) ORDER) GRANTING) AUTHORITY)

HEARD IN: The Commission's Hearing Room, Raleigh, North Carolina, on January 18, 1968, at 10:00 a.m.

BEFORE: John W. McDevitt, Commissioner

APPEARANCES:

For the Applicant:

Thomas W. Steed, Jr.
Allen, Steed, and Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

For the Protestant:

J. Ruffin Bailey
Bailey, Dixon, and Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

McDEVITT, COMMISSIONER: Maybelle Transport Company (Maybelle or Applicant) filed application on December 13, 1967, for authority to transport, by irregular route motor common carrier, Group 21, as follows:

Group 21, Cement and Mortar, in packages from Statesville, North Carolina, to all points and places in North Carolina and return of refused, damaged, or rejected shipments.

Public hearing was scheduled and notice given in the Calendar of Hearings issued on December 20, 1967. Protest and motion to intervene was filed on January 5, 1968, by Central Transport, Inc., High Point, North Carolina.

Public hearing was held as captioned. Applicant and Protestant were present and represented by counsel.

Maybelle Transport Company has both contract carrier authority and irregular route common carrier authority under North Carolina Utilities Commission Certificate No. CP-12. A portion of Maybelle's irregular route common carrier authority is as follows:

"7. Transportation of the following dry commodities, in bulk in special equipment between all points and places within the State of North Carolina: flour, cement, corn starch and its derivatives, animal feeds, powdered chemicals, salt, sugar, meal, fertilizer, dry milk, powdered mica, soda ash, fly ash, tuflite and pyrophyllite.

"8. Transportation of Group 2|, cement and mortar in packages from Selma, North Carolina, to all points and places in North Carolina, and return of refused, damaged or rejected shipments.

"9. Transportation of Group 2|, Cement and Mortar in Packages, from Salisbury, North Carolina, to all points and places in North Carolina, and return of refused, damaged, or rejected shipments."

The effect of its application upon the authority Maybelle already holds is to add an origin point (Statesville) for shipment of cement and mortar in packages. The application arises out of a request by Signal Mountain Portland Cement Company for complete transportation service for its products, cement and mortar in bulk and packages, from its newly constructed distribution facility at Statesville. Maybelle has authority under North Carolina Utilities Commission Certificate CP-|2 to transport bulk cement which constitutes ninety per cent (90%) of the shipper's traffic. For operational efficiency and convenience the shipper desires the services of Maybelle for all of its products. The additional authority which Maybelle seeks will enable it to handle the remaining ten per cent (|0%) of the shipper's traffic and more efficiently utilize its equipment.

Testimony of R. H. Greer, Vice President of Maybelle Transport Company, shows that Applicant has engaged in the transportation of cement and mortar in bulk and packages for five years; that Applicant has the financial resources, equipment, knowledge, and experience to perform the proposed service.

Witness, George B. Peck, Traffic Manager for Signal Mountain Portland Cement Company (Signal Mountain), testified that his company manufactures several types of portland cement; that Signal Mountain has a terminal under construction at Statesville from which it will distribute cement in bulk and packages by motor common carrier throughout North Carolina; that Signal Mountain requires a carrier who can transport both bulk and packaged cement; that shipments from Statesville to points in North Carolina will move in intrastate commerce; that Signal Mountain desires the services of one carrier for complete transportation service because of docking space limitations and the need for coordination of its activities; that packaged shipments will constitute no more than ten per cent (|0%) of total shipments; that Signal Mountain has five

sales representatives in North Carolina and contemplates needs for services throughout the State.

Protestant witness, J. C. Thompson, Operations and Traffic Manager for Central Transport, Inc., of High Point, North Carolina, testified that Central has engaged in the transportation of bulk and package cement since 1962; that Central holds intrastate authority to transport cement in bulk and packages between all points and places in North Carolina; that Central has equipment which may be stationed at Statesville to meet the shippers transportation requirements; that Central's President, A. L. Honbarrier, solicited shipper's business by telephone and correspondence; that Central transports bulk and packaged cement for Signal Mountain's competitors in North Carolina, and that Maybelle does not haul cement for these competitors.

Based on the testimony, exhibits, and records of the Commission, the Hearings Commissioner makes the following

FINDINGS OF FACT

1. Maybelle Transport Company has authority under Certificate CP-12, issued by the North Carolina Utilities Commission, to transport cement in bulk between all points and places in North Carolina, and authority to transport cement and mortar in packages from Salisbury and Selma, to all points and places in North Carolina, with return of refused, damaged, or rejected shipments. This authority enables Maybelle to perform ninety per cent (90%) of the transportation services required by the shipper.

2. Signal Mountain Portland Cement Company has under construction a distribution facility in Statesville, North Carolina, from which it will ship cement in bulk and packages to all points and places in North Carolina. Signal Mountain requires the services of one motor common carrier to provide complete transportation service because of docking space limitations and the need for coordination of its activities.

3. Maybelle has five years experience in the transportation of cement in bulk and packages and has equipment available to provide the proposed service.

4. Granting Maybelle's proposed authority will most adequately and conveniently fulfill the needs of Signal Mountain's new distribution facility in Statesville, will result in more efficient use of Applicant's equipment, and will not unreasonably impair the operations of the Protestant or other competing carriers nor the use of the highways by the general public.

CONCLUSIONS

1. Public convenience and necessity requires the proposed service in addition to existing authorized transportation service.

2. Maybelle Transport Company is fit, willing, and able, financially and otherwise, to properly perform the proposed service adequately and on a continuing basis.

3. Maybelle has borne the burden of proof and shown that it is entitled to authority to transport cement and mortar in packages from Statesville, North Carolina, to points and places in North Carolina in addition to its existing authority for the same commodity from the origin points of Selma and Salisbury.

IT IS, THEREFORE, ORDERED That Maybelle Transport Company, Lexington, North Carolina, be, and it is hereby, authorized to transport Group 21, Cement and Mortar, in packages from Statesville, North Carolina, to all points and places in North Carolina and return of refused, damaged, or rejected shipments as designated in Exhibit B attached hereto and made a part hereof, and that common carrier Certificate No. CP-12 be amended in accordance therewith.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-149 SUB 17

Maybelle Transport Company
Lexington
North Carolina

Irregular Route Common Carrier

EXHIBIT B

Transportation of Group 21, Cement and Mortar, in packages from Statesville, North Carolina, to all points and places in North Carolina and return of refused, damaged, or rejected shipments.

DOCKET NO. T-3, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of The New Dixie Lines, Incorporated, Brook Road and Norwood Avenue, Richmond, Virginia) RECOMMENDED ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, February 23, 1968, at 10:30 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Lucius W. Pullen
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on November 9, 1967, The New Dixie Lines, Incorporated (Applicant), Brook Road and Norwood Avenue, Richmond, Virginia, seeks to amend its Certificate No. C-472 to include authority as an irregular route common carrier to engage in the transportation of electrical and telephone equipment and supplies, including cable, wire, reels, cable accessories, scrap, poles, power, or transmission line construction material from Tarboro to points and places in the counties of Hertford, Halifax, Vance, Nash, Edgecombe, Martin, Durham, Wake, Johnston, Wilson, Pitt, Beaufort, Lenoir, Craven, Carteret, Onslow, Harnett, Cumberland, Sampson, and Columbus, and from these counties to Tarboro and to make on site deliveries upon request of customer.

Pending hearing and final determination of this application and for good cause shown, Applicant was granted temporary authority, as herein above described, by Order of the Commission dated November 27, 1967.

Notice of the application along with a description of the authority sought, including the date of hearing was published in the Commission's Calendar of Hearings issued on November 15, 1967. The hearing originally set on January 19, 1968, was subsequently continued until the captioned time and place. Protests thereto were filed by Moss Trucking Company, Inc., McLeod Trucking & Rigging Company, Inc., and Wolfe Transfer, Incorporated. Each of the protests was withdrawn prior to the hearing and no one appeared at the hearing in opposition thereto.

In support of its application, Applicant offered a number of exhibits, including a list of its terminals and offices, list of equipment and financial statement which tend to show its qualifications, financially and otherwise, to acquire the authority sought and provide an adequate and continuing service thereunder. In addition, Applicant offered the testimony of Mr. John R. Coulam, Traffic Manager of the Anaconda Wire and Cable Company, a corporation engaged in the manufacture and distribution of wire and cable products and related articles thereto as well as communication

equipment, etc. Witness said in substance that his company, at its new production and warehouse facility in Tarboro, North Carolina, has in production and on hand in stock, various aluminum and/or copper, brass, bronze, wire and cable articles (communications cable or wire) as well as electric power cable and related equipment, supplies and accessories to communications and electric power equipment, and is in dire need of the service proposed by Applicant; that said company is required by its customers in North Carolina to provide an inventory and distribution system, which will permit common carrier handling and the transportation of manufactured and in stock commodities, so as to provide prompt delivery to the customer, as needed, and at customer warehouses, storage points or at job sites; that existing authority in the area to be served is inadequate to meet his company's requirements and that the financial success of Anaconda Wire and Cable Company's manufacturing facility at Tarboro, North Carolina, would be enhanced by a grant of the authority sought by Applicant in this case. Witness also stated that Applicant has been serving his company under the aforesaid temporary authority and that the service as provided by Applicant is entirely adequate and particularly suitable to their needs.

Upon consideration of the application and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That public convenience and necessity require the proposed service in addition to existing authorized transportation service.

2. That the applicant is fit, willing and able to properly perform the proposed service.

3. That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that the applicant has carried the burden of proof required for the granting of the authority sought and that the application should be granted.

IT IS, THEREFORE, ORDERED That the application herein be, and the same is, hereby granted and that Common Carrier Certificate No. C-472 in the name of The New Dixie Lines, Incorporated, be, and the same is, hereby amended to include the authority more particularly described in Exhibit B hereto attached.

IT IS FURTHER ORDERED That The New Dixie Lines, Incorporated, begin operating under the authority herein granted within thirty (30) days from the date that this

order becomes final and that, concurrently with the beginning of such operations, temporary authority, heretofore granted Applicant, be cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-3
SUB 15

The New Dixie Lines, Incorporated
Brook Road and Norwood Avenue
Richmond, Virginia

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, Electrical and telephone equipment and supplies, including cable, wire, reels, cable accessories, scrap, poles, power, or transmission line construction material from Tarboro to points and places in the counties of Hertford, Halifax, Vance, Nash, Edgecombe, Martin, Durham, Wake, Johnston, Wilson, Pitt, Beaufort, Lenoir, Craven, Carteret, Onslow, Harnett, Cumberland, Sampson, and Columbus and from these counties to Tarboro and to make on site deliveries upon request of customer.

NOTE: The authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right.

DOCKET NO. T-804, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of O'Boyle Tank Lines, Incorporated,) ORDER
4848 Cordell Avenue, Washington 14, D.C.)

HEARD IN: The Hearing Room of the North Carolina Utilities Commission, Raleigh, North Carolina, on October 29, 1968

BEFORE: Harry T. Westcott, Chairman (Presiding), and Commissioners Thomas R. Eller, Jr., John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
Attorneys at Law
108 Commerce Place
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

WESTCOTT, CHAIRMAN: These proceedings arise on application of O'Boyle Tank Lines, Incorporated, and five other common carriers which were by stipulation consolidated for hearing and record (with separate orders to issue), for authority to transport Group 21 (Other Specific Commodities); namely, fertilizer, fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution in bulk and in bags, dry and liquid between Hertford County and all points and places within the State of North Carolina. At the call of the case for hearing, applicant requested and, with the consent of protestant, was allowed to amend its application as follows:

> The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

Before the introduction of evidence by either of the parties of record, protestant, Chemical Leaman Tank Lines, Inc., sought and was granted authority to withdraw from the case as a protestant; whereupon applicant offered evidence in support of its application.

Having considered all evidence adduced on all material issues arising in the proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Farmers Chemical Association of Tyner, Tennessee, has been engaged in the distribution of fertilizer, fertilizer materials, nitric acid, anhydrous ammonia, nitrogen solution, in bulk and in bags, dry and liquid, at points and places within the State of North Carolina.

2. That it is now in the process of constructing a plant at Tunis, Hertford County, North Carolina, for the sale and distribution of the above-named fertilizers and fertilizer materials for which application for transportation thereof is herein made.

3. That it now has constructed a large storage tank from which it will deliver said materials from the origin point of Tunis to points and places in North Carolina pending the completion of its manufacturing facilities in the fall of 1969.

4. That Farmers Chemical is in need of transportation now and will need in the future the service of common carriers to transport its products between points and places within the State of North Carolina.

5. That O'Boyle Tank Lines, Incorporated, is certificated by this Commission to engage in the transportation of property by motor carrier in the manner set forth in its Certificate No. CP-20.

6. That O'Boyle Tank Lines, Incorporated, has the equipment, is financially able and otherwise qualified to engage in the transportation of property in the manner sought by the instant application.

7. That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and that the applicant is fit, willing and able to properly perform the proposed service on a continuing basis.

CONCLUSIONS

The evidence before the Commission tends to show that the use of liquid fertilizer and fertilizer materials and other commodities sought by the applicant herein is increasing each year; that a peak in the movement of these properties develops in the months of April, May and June, the season when such materials are generally used by the farmers of North Carolina; that there is a demand and need for service of the applicant by the shippers and receivers of the commodities sought to be transported. We are therefore of the opinion and conclude that the evidence in this case supports the granting of the authority sought by the applicant.

IT IS THEREFORE ORDERED THAT Certificate No. CP-20 issued by this Commission to O'Boyle Tank Lines, Incorporated, Washington, D.C., be amended so as to authorize the additional authority granted as set forth in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That a copy of this order be transmitted to O'Boyle Tank Lines, Incorporated, and to the attorney for the applicant.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-804, SUB 15

O'Boyle Tank Lines, Incorporated
4848 Cordell Avenue
Washington 14, D. C.

EXHIBIT B

Irregular Route Common Carrier Authority

The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

DOCKET NO. T-208, SUB 28

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Overnite Transportation Company, 1100 Commerce Road, Richmond, Virginia, for authority to transport Group 1, General Commodities, between Charlotte and Waxhaw over North Carolina Highway No. 16, between Monroe and the South Carolina State Line, between Monroe and Weddington over Highway No. 84, and between Monroe and the South Carolina State Line over Highway No. 601 and return over the same routes, serving all intermediate points and serving the Belk Floor Covering site located near Beulah's Crossing as an off-route point) ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on February 28, 1968, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Applicant:

Thomas D. Bunn
Hatch, Little, Bunn & Jones

Attorneys at Law
P. O. Box 527, Raleigh, North Carolina 27602

No Protestants.

ELLER, COMMISSIONER: By application filed with the Commission on the 20th day of December, 1967, Overnite Transportation Company (Applicant), 1100 Commerce Road, Richmond, Virginia, a regular route common carrier of property by motor vehicle, seeks authority to engage in the transportation of general commodities (a) between Charlotte, North Carolina, and Waxhaw, North Carolina, from Charlotte over North Carolina Highway 16 to Waxhaw, returning over the same route serving all intermediate points; (b) between Monroe, North Carolina, and the North Carolina-South Carolina State Line. Specifically, from Monroe over North Carolina Highway No. 75 to North Carolina-South Carolina State Line, returning over the same route, serving all intermediate points; between Monroe, North Carolina, and Weddington, North Carolina; from Monroe over North Carolina Highway No. 84 to Weddington, returning over same route, serving all intermediate points; between Monroe, North Carolina, and North Carolina-South Carolina State Line; from Monroe over U.S. Highway No. 601 to North Carolina-South Carolina State Line, returning over same route, serving all intermediate points and the off-route point of Belk Floor Covering site located at or near Beulah's Crossing (near junction of U.S. Highway No. 601 and N.C. Highway No. 205).

Notice of the filing, together with the description of the rights sought and the time and place of hearing was published in the Commission's Calendar of Hearings issued on December 20, 1967. No protests to the application were filed and no one appeared at the hearing in opposition thereto.

In support of its application, the Applicant offered by reference the records of the Commission, which include its present intrastate operating authority, its list of equipment on file with the Commission, and its latest annual reports filed with the Commission. The Applicant further offered Exhibit B, indicating the highways over which the service is to be performed, Exhibit C-1, indicating the terminal facilities of the Applicant in North Carolina, Exhibit C-2, the Applicant's most recent equipment list, and Exhibits D-1 and D-2, which disclose the assets and liabilities of the Applicant.

In addition, the Applicant offered the testimony of P. S. Simmons, Vice-President of Overnite Transportation Company, who testified of specific requests upon his company to serve the area applied for and also the lack of regular route common carrier service over any portion of such route. Mr. Simmons further testified that if the Commission saw fit to grant this application, his company would operate one or more pedal run trucks from the Charlotte terminal over this entire route daily. In addition, the Applicant offered

testimony of Mr. Ralph N. Belk, President of Belk Floor Coverings, with home office in Richmond, Virginia, and a storage warehouse located approximately one mile off U.S. Highway No. 601 at Beulah's Crossing, near the junction of U.S. Highway No. 601 and N.C. Highway No. 205. The witness testified, in substance, that Belk's warehouse at Beulah received approximately 50 to 75 thousand pounds of in-bound shipments each week and approximately the same poundage in out-bound shipments for the same period of time; that no regular route common carrier services are available to and from the plant site and that the two irregular route common carriers who presently offer him service do not meet his company's needs as to time in transit nor as to service to all points of destination. The witness further testified that the warehouse at Beulah shipped to all points in North Carolina and west of Raleigh, and that the proposed service of Overnite Transportation Company is definitely needed by his operation in addition to the existing irregular route service.

The Applicant further offered the testimony of Robert L. Scott, Executive Director of the Industrial Development Commission of Union County. The witness stated, in substance, that he had been requested by the Industrial Development Commission of Union County and by Johnson Manufacturing Company, a new spinning plant recently constructed at Mineral Springs, North Carolina, to appear in behalf of the application. Mr. Scott testified that his investigation revealed no regular route common carrier serving the Johnson Manufacturing Company plant and further testified that although he traveled this section of Union County with regularity, he could never recall observing motor carriers operating in that area, and that the proposed service was definitely needed in addition to what little irregular route truck service which was now available in the territory applied for in this application.

Upon consideration of the application and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That a public demand and need exists for the proposed service in addition to existing authorized transportation service.

2. That the Applicant is fit, willing, and able to properly perform the proposed service.

3. That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

Based upon the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

1. That the public convenience and necessity will be served, both now and in the future, by the granting to the Applicant of the authority to serve the routes designated in Exhibit A hereto attached.

2. That the granting of said authority will not be burdensome or duplicative of existing intrastate motor freight authorities and services.

3. That the Applicant is able and willing to provide regular route intrastate motor freight transportation along said routes.

IT IS, THEREFORE, ORDERED that Applicant's intrastate Common Carrier Certificate No. T-208 be amended to include the authority set forth in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED that the Applicant cause to be amended its tariff on file with this Commission so as to indicate to the shipping and receiving public its authorization to render service within the territory herein granted by this Commission, and otherwise comply with the rules and regulations of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-208, SUB 28

Overnite Transportation Company
1100 Commerce Road
Richmond, Virginia

Regular Route Common Carrier

EXHIBIT A

Transportation of Group I, General Commodities, except those requiring special equipment, over the following routes:

Between Charlotte, North Carolina, and Waxhaw, North Carolina

From Charlotte over N.C. Highway 16 to Waxhaw, returning over same route serving all intermediate points.

Between Monroe, North Carolina, and North Carolina-South Carolina State Line

From Monroe over N.C. Highway 75 to North Carolina-South Carolina

State Line, returning over same route, serving all intermediate points.

Between Monroe, North Carolina, and Weddington, North Carolina
From Monroe over N.C. Highway 84 to Weddington, returning over same route, serving all intermediate points.

Between Monroe, North Carolina, and North Carolina-South Carolina State Line
From Monroe over U.S. Highway 601 to North Carolina-South Carolina State Line, returning over same route, serving all intermediate points and the off-route point of Belk Floor Covering site located at or near Beulah's Crossing (near junction of U.S. Highway 601 and N.C. Highway 205).

DOCKET NO. T-1418

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of P & Y Mobile Homes, Inc., Sharpsburg, North Carolina, to transport Group 21, Mobile Homes, house trailers and travel trailers not to exceed 12 feet in width and 70 feet combination length, Statewide	) RECOMMENDED) ORDER)

HEARD IN: The Commission Hearing Room, Old YMCA Building, Raleigh, North Carolina, on January 19, 1968, at 10:00 a.m.

BEFORE: Commissioner Thomas R. Eller, Jr.

APPEARANCES:

For the Applicant:

I. T. Valentine, Jr.
Valentine & Valentine
Attorneys at Law
Box MM, Nashville, North Carolina

For the Protestants:

Charles B. Morris, Jr.
Jordan, Morris and Hoke
Attorneys at Law

Box 1606, Raleigh, North Carolina
For: National Trailer Convoy, Inc.
Transit Homes, Inc.

Earl W. Vaughn
Vaughn and Harrington
Attorneys at Law
109 West Washington Street
Eden, North Carolina
For: Morgan Drive-Away, Inc.

ELLER, HEARING COMMISSIONER: This is an application by P & Y Mobile Homes, Incorporated, 301 Highway, Sharpsburg, North Carolina, for motor common carrier authority for the transportation of mobile homes between all points and places in the State.

Public hearings were set, noticed in the Commission's Calendar of Truck Hearings, and held, with parties present and participating as captioned.

The competent, material, and substantial evidence justifies the following

FINDINGS OF FACT

1. Applicant, P & Y Mobile Homes, Incorporated, is a duly created and existing corporation under the laws of North Carolina with principal offices at Sharpsburg in Nash County, North Carolina.

2. Applicant's principal business is that of selling mobile homes. It now owns and uses two (2) "short-dog" trucks in moving its own mobile homes. Applicant receives calls and demands from the public for transportation of mobile homes, but is unable to meet these calls without operating authority such as proposed.

3. Applicant has total assets of approximately $180,000, including rolling equipment valued at $9,000. It has made arrangements to add equipment if the proposed authority is granted and is financially able to obtain and use any equipment which may reasonably be justified by public demands for service. The value of property of all kinds which Applicant initially will devote to the proposed service is $32,000.

4. Applicant's officers, managers, and employees are familiar with the safety requirements for moving mobile homes on the highways of the State, are experienced in setting up and maintaining mobile homes, and are knowledgeable in the specialized transportation needs of mobile home owners.

5. The nearest authorized carrier equipment to Sharpsburg is at Wilson, North Carolina. This is a small

proprietorship operation which has not protested granting the proposed authority.

6. Mobile home dealers are permitted to deliver mobile homes they sell; thereafter they are not permitted to make secondary moves unless authorized. Purchasers of mobile homes would be convenienced if they could obtain the person who sold them their mobile home to make this secondary move. Purchasers of mobile homes further have a tendency to call on the dealer who sold them rather than to telephone a carrier at some distant point.

7. Certain mobile home dealers maintain no rolling equipment or equipment insufficient or inadequate for moving their mobile homes on the highways of the State. These dealers are inconvenienced and delayed by calling an authorized carrier for equipment from distant points to meet their transportation needs.

8. Financing institutions have a need for readily available equipment of authorized carriers to originate shipments of repossessed mobile homes from various points in the State to various points. Some of these needs involve several moves. Initially, the move may be very short, followed later by a longer move. Existing authorized service is not adequately meeting this need.

9. Sales of mobile homes in North Carolina has increased from about 3,172 in 1960 to 15,548 in 1967. This rate of increase may be expected to continue to increase. There is a need for additional authorized carriers primarily interested in and serving short-haul needs throughout the State.

CONCLUSIONS

1. A public demand and need exists for the proposed service in addition to existing authorized service.

2. Applicant is financially solvent and fit, ready, willing, and able to provide the service proposed on a continuing basis.

3. Applicant has borne the burden of proof and is entitled to be issued, and thereafter to operate under, the authority which it seeks in this docket.

Accordingly, IT IS ORDERED:

1. That the application in this docket be, and it hereby is, approved.

2. That the Chief Clerk of this Commission shall issue to Applicant a certificate in accordance with Exhibit B, hereto attached.

3. Applicant is allowed thirty (30) days from the date this order becomes final to file its tariffs of rates and charges, its evidence of security for the protection of the public and otherwise comply with the rules and regulations of this Commission and begin operations hereunder.

4. Pending issuance of the certificate herein granted, this order shall operate as full and complete evidence of the authority herein granted.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1418 P & Y Motile Homes, Incorporated
301 Highway
Sharpsburg, North Carolina

Irregular Route Common Carrier

EXHIBIT B Transportation of mobile homes; i.e., house trailers, whether for residence, mobile offices, mobile special equipment, mobile display purposes and any and all other purposes for which mobile homes (house trailers) may be lawfully used, and accessories to mobile homes between all points and places in North Carolina.

DOCKET NO. T-1431

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Package Delivery Service, Inc.,) ORDER
Durham, North Carolina, for Motor Common) GRANTING
Carrier Authority) AUTHORITY

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on October 8, 1968, at 10:00 A.M.

BEFORE: Commissioner Thomas R. Eller, Jr. (Presiding) and Commissioners John W. McDevitt, and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Clarence H. Noah
Attorney at Law

1425 Park Drive
Raleigh, North Carolina

ELLER, COMMISSIONER: Public hearings were set on this Application and notice thereof was published in the Commission's Calendar of Hearings on August 15, 1968.

There were no protests or motions to intervene and the matter was heard with parties and counsel present as captioned. Applicant presented the testimony of some nine (9) witnesses and introduced three (3) exhibits.

Upon the evidence adduced, we make the following

FINDINGS OF FACT

1. Applicant, Package Delivery Service, Inc., is a duly created and existing North Carolina corporation with headquarters at 1300 Pettigrew Street, Durham, North Carolina, and is properly before the Commission, which has jurisdiction over the subject matter of the Application.

2. Applicant is presently the holder of North Carolina Utilities Commission Exemption Certificate No. E-14360, and is engaged in providing transportation of light commodities in delivery service within the exempted Cities of Durham and Raleigh and their commercial zones, using five (5) light trucks equipped with mobile radio units. Applicant's carrier equipment has a gross investment value of $7,776. It has current assets of approximately $3,500 and is a well-managed going business in sound operating condition. Applicant's common capital stock of a stated value of $4,300 is closely held primarily by its managers and operators. It has current liabilities of $2,170 and long-term debt of $1,010.

3. Applicant is applying for irregular route motor vehicle common carrier authority as follows:

Group 21, Packages or parcels weighing not more than 60 pounds per package or parcel, deliveries effected day of pick-up, between all points located in Durham, Orange, and Wake Counties.

4. In its operations as an exempt carrier, Applicant has had calls to handle shipments of the class sought in the territory sought. Applicant has refused service where these shipments involved territory other than within the Cities of Durham and Raleigh and their commercial zones since Applicant is not lawfully authorized as an exempt carrier to perform the service requested.

5. There is no common carrier transportation service between points in the Counties of Durham, Orange, and Wake, either on a "same day" delivery guarantee basis or on a door-to-door basis.

6. The three (3) counties aforesaid are proximate to each other and have very substantial daily commercial intercourse between them and the several cities and towns and industrial and commercial establishments within them. Many businesses, such as manufacturers and distributors of medical instruments and supplies, heavy equipment parts suppliers, business equipment and materials, etc., have needs for daily pickups, same day delivery, and door-to-door transportation. Such transportation is now being performed in the areas of the three (3) counties other than within Durham and Raleigh and their commercial zones almost exclusively by private vehicles at substantial waste and delay to the shippers and receivers. The same condition also applies among the various municipalities within the counties, but outside the commercial zones of the county seats of Raleigh and Durham.

CONCLUSIONS

1. Public Convenience and Necessity require the proposed service in addition to existing, authorized transportation service.

2. Applicant, Package Delivery Service, Inc., is fit, willing and able to properly perform the proposed service.

3. Applicant, Package Delivery Service, Inc., is solvent and financially able to furnish adequate service on a continuing basis.

4. Upon the grant of authority for the proposed service, Applicant will have no further use for the exemption certificate it now holds and continuation of the same will be of no material benefit to the public. Exemption Certificate No. E-14360 should, therefore, be cancelled.

Accordingly, IT IS ORDERED:

1. That the Application in this docket be, and the same hereby is, approved and the Chief Clerk of the Commission is hereby directed to issue to Package Delivery Service, Inc., Durham, North Carolina, a motor vehicle common carrier certificate in accordance with the authority herein granted and described in Exhibit B hereto attached and incorporated. Pending issue of the certificate herein granted, this Order shall operate as full and complete evidence of the authority herein granted.

2. Applicant shall, within thirty (30) days of the date this order issues, file with this Commission its evidence of security for the protection of the travelling public, its tariffs providing rates and charges for the transportation services to be performed, its list of equipment used and to be used in the operation, otherwise comply with the Rules of this Commission and its System of Accounts, and begin operations under the authority herein granted. Further notice to the Commission is waived, except that Applicant

shall not begin operations until it has filed the instruments and complied with the rules as aforesaid.

3. A copy of this Order shall be sent by regular mail to Applicant and to its counsel of record.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1431	Package Delivery Service, Inc., of Durham, North Carolina 1300 Pettigrew Street Durham, North Carolina
	Irregular Route Common Carrier
EXHIBIT B	Group 21, Packages or parcels weighing not more than 60 pounds per package or parcel, deliveries effected day of pick-up, between all points located in Durham, Orange and Wake Counties.

DOCKET NO. T-589, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
D. W. Parrish, d/b/a Parrish Oil Company,) ORDER
South Wall Street, Benson, North Carolina, For) GRANTING
Authority to Add Selma, North Carolina, as an) APPLICATION
Originating Terminal in Contract Carrier)
Permit No. P-46)

HEARD IN: Hearing Room of the Commission, Raleigh, North Carolina, on September 12, 1968

BEFORE: T. G. Killian, Examiner

APPEARANCES:

For the Applicant:

J. Elton Mitchiner
Mitchiner & Andrews
Attorneys at Law
1404 Branch Bank & Trust Building
Raleigh, North Carolina

For the Protestant:

Wright Dixon, Jr.
Bailey, Dixon & Wooten

Attorneys at Law
Insurance Building
Raleigh, North Carolina
For: Schwerman Trucking Company

KILLIAN, EXAMINER: D. W. Parrish Oil Company, South Wall Street, Benson, North Carolina (Applicant), by application filed June 19, 1968, seeks to have the contract carrier authority it holds under permit No. P-46 amended to include Selma, North Carolina, as an originating terminal of petroleum and petroleum products for transportation in liquid form in bulk, in tank trucks, to points and places in Johnston and Wake Counties.

Public hearing was scheduled and held as captioned.

Protest and Motion for leave to intervene was filed August 28, 1968, by counsel, Bailey, Dixon & Wooten, Attorneys at Law, Raleigh, North Carolina, for and on behalf of Schwerman Trucking Company.

Applicant and Protestant were present by company representatives and represented by counsel.

Applicant offered evidence through testimony tending to show that for the past several years he has been engaged solely in the transportation as a contract carrier of petroleum and petroleum products for account of Pure Oil Company; that he owns one Ford tractor and one Progress trailer; that he transported petroleum products for Pure Oil Company from the Wilmington terminal prior to 1965 but that when the Selma terminal was opened Pure Oil changed its source of supply and that since 1965 he has transported for account of Pure Oil Company out of the terminal at Selma.

Schwerman Trucking Company, Protestant, is authorized to engage in North Carolina intrastate commerce as set forth and described in Certificate No. CP-31, and among other commodities is authorized to engage as a common carrier in the transportation over irregular routes of shipments of petroleum products originating at the terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Salisbury, Apex, Fayetteville and Selma to points and places throughout the State. Protestant offered evidence and testimony tending to show that it has one unit suitable for the handling of petroleum and petroleum products stationed at the Selma terminal; that it is currently hauling from said terminal; that it is not now transporting petroleum or petroleum products for account of Pure Oil Company to any location in the State on a regular account; that it is ready, willing and able to handle additional traffic and is continually seeking new accounts, new business and new movements.

Upon consideration of the pertinent records of the Commission of which judicial notice has been taken, and the

evidence adduced at the hearing the Hearing Examiner finds and concludes that the application should be granted.

ACCORDINGLY, IT IS ORDERED:

(1) That the application of D. W. Parrish, d/b/a Parrish Oil Company, Benson, North Carolina, be, and the same is hereby, granted.

(2) That Permit No. P-46 in the name of D. W. Parrish, d/b/a Parrish Oil Company be amended to include Selma as an originating terminal as more specifically described in Exhibit A attached hereto.

(3) That D. W. Parrish, d/b/a Parrish Oil Company file with the Commission a copy of his contract, and a copy of his revised schedule of minimum rates and charges.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-589 SUB 4

D. W. Parrish, d/b/a
Parrish Oil Company
South Wall Street
Benson, North Carolina

CONTRACT CARRIER AUTHORITY

EXHIBIT A

Transportation of petroleum and petroleum products in bulk, in tank trucks, under individual bilateral contracts with particular shippers, over irregular routes, from existing originating terminals at or near Wilmington, Morehead City, River Terminal, Thrift, Friendship, Salisbury, and Selma to points and places in the counties of Johnston and Wake.

DOCKET NO. T-622, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Public Transport Corporation, P. O. Box 327, Troutman, North Carolina) ORDER)

HEARD IN: The Hearing Room of the North Carolina Utilities Commission, Raleigh, North Carolina, on October 29, 1968

BEFORE: Harry T. Westcott, Chairman (Presiding), and Commissioners Thomas R. Eller, Jr., John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

R. Mayne Albright
Attorney at Law
P. O. Box 1206, Raleigh, North Carolina 27602

For the Protestants:

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
Attorneys at Law
108 Commerce Place
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

WESTCOTT, COMMISSIONER: These proceedings arise on application of Public Transport Corporation and five other common carriers, which were by stipulation consolidated for hearing and record (with separate orders to issue), for authority to transport Group 21 (Other Specific Commodities); namely, fertilizer, fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution in bulk and in bags, dry and liquid between Hertford County and all points and places within the State of North Carolina. At the call of the case for hearing, applicant requested and, with the consent of protestant, was allowed to amend its application as follows:

> The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

Before the introduction of evidence by either of the parties of record, protestant, Chemical Leaman Tank Lines, Inc., sought and was granted authority to withdraw from the case as a protestant; whereupon applicant offered evidence in support of its application.

Having considered all evidence adduced on all material issues arising in the proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Farmers Chemical Association of Tyner, Tennessee, has been engaged in the distribution of fertilizer, fertilizer materials, nitric acid, anhydrous ammonia, nitrogen solution, in bulk and in bags, dry and

liquid, at points and places within the State of North Carolina.

2. That it is now in the process of constructing a plant at Tunis, Hertford County, North Carolina, for the sale and distribution of the above-named fertilizers and fertilizer materials for which application for transportation thereof is herein made.

3. That it now has constructed a large storage tank from which it will deliver said materials from the origin point of Tunis to points and places in North Carolina pending the completion of its manufacturing facilities in the fall of 1969.

4. That Farmers Chemical is in need of transportation now and will need in the future the service of common carriers to transport its products between points and places within the State of North Carolina.

5. That Public Transport Corporation is certificated by this Commission to engage in the transportation of property by motor carrier in the manner set forth in its Common Carrier Certificate No. C-539.

6. That Public Transport Corporation has the equipment, is financially able and otherwise qualified to engage in the transportation of property in the manner sought by the instant application.

7. That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and that the applicant is fit, willing and able to properly perform the proposed service on a continuing basis.

CONCLUSIONS

The evidence before the Commission tends to show that the use of liquid fertilizer and fertilizer materials and other commodities sought by the applicant herein is increasing each year; that a peak in the movement of these properties develops in the months of April, May and June, the season when such materials are generally used by the farmers of North Carolina; that there is a demand and need for service of the applicant by the shippers and receivers of the commodities sought to be transported. We are therefore of the opinion and conclude that the evidence in this case supports the granting of the authority sought by the applicant.

IT IS THEREFORE ORDERED That Common Carrier Certificate No. C-539 issued by this Commission to Public Transport Corporation, Troutman, North Carolina, be amended so as to authorize the additional authority granted as set forth in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That a copy of this order be transmitted to Public Transport Corporation and to the attorney for the applicant.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-622, SUB 8

Public Transport Corporation
P. O. Box 327
Troutman, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

DOCKET NO. T-1403

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Signal Delivery Service, Inc. - Application for contract carrier authority) RECOMMENDED) ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, December 19, 1967, at 10:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

F. Kent Burns
Boyce, Lake & Burns
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina

John Andrew Kundtz
Falsgrae, Kundtz, Reidy & Shoup
Attorneys at Law
1050 Union Commerce Building
Cleveland, Ohio

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on August 2, 1967, Signal Delivery Service, Inc. (Applicant), 782 Industrial Drive, Elmhurst, Illinois, seeks a permit to engage in contract carrier operations by motor vehicle in the transportation of such merchandise, articles and commodities as are dealt in by mail order houses and retail stores, and in connection therewith, such equipment, materials and supplies used in the conduct of such business, including returned shipments, under individual bilateral contract with Sears, Roebuck & Company (Sears) between stores and warehouses of Sears in Greensboro, North Carolina and points and places in North Carolina and between points and places in North Carolina and stores and warehouses of Sears in Greensboro, North Carolina.

Notice of said application, along with a description of the authority sought, together with the time and place of hearing was published in the Commission's Calendar of Hearings issued August 1, 1967. The hearing was subsequently continued from October 19, 1967, to December 19, 1967.

The application is unopposed.

The evidence and exhibits in support of the application tend to show that Applicant is a corporation, organized under the laws of the State of Delaware on March 13, 1947; that Applicant is a wholly owned subsidiary of Leaseway Transportation Corp., which is a holding company; that Leaseway presently controls a number of companies, two of which are carriers holding authority from this Commission, namely, Mitchell Transport, Inc., and Sugar Transport, Inc.; that Applicant presently holds contract carrier authority from the Interstate Commerce Commission to serve Sears in certain other areas of the country and has pending at this time similar applications for intrastate authority to serve Sears in the States of Tennessee and Georgia; that Sears presently performs its own transportation in private carriage and owns some seventy (70) tractors which will be sold to Applicant if the authority sought herein is granted; that trailers for the proposed service would be provided by Sears and would be pulled by Applicant's power equipment, and that the proposed service would be provided by dedicated equipment painted in Sears' colors.

Applicant's balance sheet as of December 31, 1966, shows total liabilities and net worth of $3,241,143.00, including current assets of $1,411,709.00; total liabilities of $2,172,215, including current liabilities of $1,080,625.00; capital stock of $100,500.00 and an earned surplus of $968,428.00.

Applicant indicates a target date of April 1, 1968, for beginning of operations if the authority herein sought is granted.

Testimony of the supporting shipper shows that Sears Roebuck & Company is engaged in the sale of general merchandise through its catalogs and retail stores; that it has a plant and warehouse at Greensboro, North Carolina, from which it distributes merchandise to retail stores and catalog sales offices throughout the State of North Carolina; that each of the selling units have a definite time by which they must send their customer orders to the plant to assure delivery on the promised date; that orders received at the plant must be scheduled for handling and shipment on the same day they are received; that Sears found it increasingly difficult to obtain pickups by common carriers for daily movement of all of its orders and could not always obtain additional equipment from such carriers during peak selling seasons; that in 1951, it initiated private carriage to meet its needs; that Sears has now reached a point where it realizes it is engaged in the trucking business as well as its principal business and it desires to divest itself of the transportation responsibilities and place it in the hands of a contract carrier which would enable it to retain the benefits and advantages of its private carrier operation; that it requested Applicant to seek the authority applied for because Applicant has provided similar service for Sears in other areas for many years; that it has reached an agreement with Applicant as to the basic provisions for the proposed service and has entered into a tentative contract with Applicant, a copy of which was filed with the Commission at the time of the hearing; that its private carriage operation which it seeks to have Applicant replace is only a small portion of the overall transportation it requires and it will continue to use common carriers to about the same extent as in the past.

Upon consideration of the record and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the proposed operations conform with the definition in the Public Utilities Act of a contract carrier.

2. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers.

3. That the proposed service will not unreasonably impair the use of the highways by the general public.

4. That the applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

5. That the proposed operations will be consistent with the public interest and the policy declared in the Public Utilities Act.

CONCLUSIONS

In this proceeding, the evidence establishes that Applicant proposes to provide a dedicated service for a single shipper which it now serves in a similar manner in other areas of the country. The service which Applicant proposes to provide would replace Sears' private carriage operation in the State of North Carolina which Sears desires to discontinue. The proposed service would be very similar to the dedicated and closely coordinated private carriage which Sears found necessary to initiate for the prompt movement and scheduled delivery of its merchandise within this State. It is apparent that a grant of the authority sought would not adversely effect the operations of carriers operating under certificates or rail carriers. On the other hand, the denial of the application would deprive Applicant of an opportunity to expand its service for a shipper it now serves in other states and would compel Sears to continue to provide private transportation for its rapidly increasing volume of traffic which it desires to turn over to a for hire motor carrier.

Having considered all of the evidence presented herein in the light of the criteria set forth in G.S. 62-262(i), the Examiner concludes that Applicant has borne the burden of proof required and that a grant of the authority applied for is warrented.

IT IS, THEREFORE, ORDERED That Signal Delivery Service, Inc., 782 Industrial Drive, Elmhurst, Illinois, be, and the same is, hereby granted a contract carrier permit to engage in the transportation of freight under bilateral contract between Applicant and Sears, Roebuck & Company as particularly described and limited in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED That Applicant file with the Commission appropriate insurance, copy of contract between Applicant and Shipper, schedule of minimum rates and charges, lists of equipment, designation of process agent and otherwise comply with the rules and regulations of this Commission and institute operations on or before April 1, 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

T-1403 Signal Delivery Service, Inc.
782 Industrial Drive
Elmhurst, Illinois

Contract Carrier Authority

EXHIBIT A

Transportation of such merchandise, articles and commodities as are dealt in by mail order houses and retail stores, and in connection therewith, such equipment, materials and supplies used in the conduct of such business, including returned shipments, under individual bilateral contract with Sears, Roebuck & Co., between stores and warehouses of Sears, Roebuck & Co., in Greensboro, North Carolina and points and places in North Carolina and between points and places in North Carolina and stores and warehouses of Sears, Roebuck & Co., in Greensboro, North Carolina.

DOCKET NO. T-1403

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Signal Delivery Service, Inc., for contract carrier authority) ORDER)

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on April 4, 1968, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners John W. McDevitt, H. Alexander Biggs, Jr., Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Applicant:

F. Kent Burns
Boyce, Lake & Burns
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina
For: Signal Delivery Service, Inc.

Thomas C. Phillips, Jr.
Law Department
Sears, Roebuck and Company
675 Ponce de Leon Avenue, N. G.
Atlanta, Georgia 30033
For: Sears, Roebuck and Company

J. A. Kundtz
Falsgraf, Kundtz, Reidy & Shoup

Attorneys at Law
1050 Union Commerce Building
Cleveland, Ohio 44115
For: Signal Delivery Service, Inc.

No Protestants.

ELLER, COMMISSIONER: This application was originally heard by Hughes, Examiner, and a Recommended Order was issued approving the application and granting the permit requested.

Exceptions having been filed by two (2) Commissioners before the Recommended Order became final, the Commission set the Recommended Order aside and ordered hearing de novo.

The evidence adduced justifies the following

FINDINGS OF FACT

1. Applicant, Signal Delivery Service, Inc. (Signal), is a corporation organized under the laws of the State of Delaware, headquartered in Elmhurst, Illinois, and authorized to do business in the State of North Carolina. Applicant has been performing transportation services in other states and in interstate commerce since about 1947. Among those shippers served in other states has been Sears, Roebuck and Company. Applicant is a wholly-owned subsidiary of Leaseway Transportation Corporation, a large holding company of transportation companies, two of which are North Carolina authorized carriers, viz: Mitchell Transport, Inc., and Sugar Transport, Inc.

2. Applicant's most current balance sheet shows earned surplus of $968,428, current assets of $1,411,709, current liabilities of $1,080,625, and a capital stock account of $100,500. Applicant has a large number of trucks and is proposing to purchase additional equipment from Sears, Roebuck and Company.

3. Sears, Roebuck and Company is engaged in the sale of general merchandise through its catalogs and retail stores. It has a plant and warehouse at Greensboro, North Carolina, from which it distributes merchandise to retail stores and catalog sales offices throughout the State of North Carolina. Each of the selling units have a definite time by which they must send their customer orders to the plant to assure delivery on the promised date. Orders received at the plant must be scheduled for handling and shipment on the same day they are received. Sears finds it increasingly difficult to obtain pickups by common carriers for daily movement of all of its orders and cannot always obtain additional equipment from such carriers during peak selling seasons. In 1951, it initiated private carriage to meet its needs, but has now decided to divest itself of its transportation responsibilities and place them in the hands of a contract carrier which would enable it to retain the

specialized services and advantages heretofore realizable only through its private carrier operation.

4. Sears requested Applicant to seek the authority applied for because Applicant has provided similar service for Sears in other areas for many years and there is some advantage to Sears in dealing with the same carrier in its multi-state and interstate operations.

5. Applicant and Sears have entered, executed, and filed a formal contract between them providing for the specialized service, exclusive dedication of equipment, and rates involved. The rates proposed are in dollar effect generally as high as or slightly in excess of that of common carriers to the extent the service rendered is comparable.

CONCLUSIONS

1. That the proposed operations conform with the definition in the Public Utilities Act of a contract carrier.

2. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers.

3. That the proposed service will not unreasonably impair the use of the highways by the general public.

4. That the Applicant is fit, willing, and able to properly perform the service proposed as a contract carrier.

5. That the proposed operations will be consistent with the public interest and the policy declared in the Public Utilities Act.

6. It being established by the evidence that Leaseway Transportation Corporation is affiliated with two other authorized carriers in the State of North Carolina and is the controlling stockholder of Applicant, Leaseway is, therefore, subject to the jurisdiction of the North Carolina Utilities Commission pursuant to G.S. 62-3(23)(c).

7. It being established by the evidence that Leaseway, as the effective owner of a corporation which in this State purchased authority here applied for and contracted to sell the permit for said authority within one (1) year after such purchase at a profit of approximately $73,000 (which permit has now been cancelled), the permit for authority herein applied for should not be sold by Leaseway or its affiliates for value.

Accordingly, IT IS ORDERED:

1. That the application of Signal Delivery Service, Inc., 782 Industrial Drive, Elmhurst, Illinois, be, and it hereby is, approved and the Chief Clerk of this Commission

is hereby authorized and directed to issue to Applicant a permit in accordance with Exhibit "A" hereto attached and made a part hereof.

2. Applicant shall file with the Commission appropriate insurance, copy of contract between Applicant and shipper, schedule of minimum rates and charges, lists of equipment, designation of process agent and otherwise comply with the rules and regulations of this Commission before beginning operations under the authority herein granted.

3. A copy of this order shall operate as the full evidence of the authority herein granted pending issuance of the permit as herein provided.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1403

Signal Delivery Service, Inc.
782 Industrial Drive
Elmhurst, Illinois

Contract Carrier Authority

EXHIBIT A

Transportation of such merchandise, articles, and commodities as are dealt in by mail order houses and retail stores, and in connection therewith, such equipment, materials, and supplies used in the conduct of such business, including returned shipments, under individual bilateral contract with Sears, Roebuck and Company, between stores and warehouses of Sears, Roebuck and Company in Greensboro, North Carolina, and points and places in North Carolina and between points and places in North Carolina and stores and warehouses of Sears, Roebuck and Company, in Greensboro, North Carolina.

NOTE: This authority is restricted to transportation solely on behalf of or for Sears, Roebuck and Company and is not transferable.

DOCKET NO. T-380, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Tidewater Transit Co., Inc., P. O. Box 189, Kinston, North Carolina) ORDER)

HEARD IN: The Hearing Room of the North Carolina Utilities Commission, Raleigh, North Carolina, on October 29, 1968

BEFORE: Harry T. Westcott, Chairman (Presiding), and Commissioners Thomas R. Eller, Jr., John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
Attorneys at Law
108 Commerce Place
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

WESTCOTT, CHAIRMAN: These proceedings arise on application of Tidewater Transit Co., Inc., and five other common carriers which were by stipulation consolidated for hearing and record (with separate orders to issue), for authority to transport Group 21 (Other Specific Commodities); namely, fertilizer, fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution in bulk and in bags, dry and liquid between Hertford County and all points and places within the State of North Carolina. At the call of the case for hearing, applicant requested and, with the consent of protestant, was allowed to amend its application as follows:

> The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

Before the introduction of evidence by either of the parties of record, protestant, Chemical Leaman Tank Lines, Inc., sought and was granted authority to withdraw from the

case as a protestant; whereupon applicant offered evidence in support of its application.

Having considered all evidence adduced on all material issues arising in the proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Farmers Chemical Association of Tyner, Tennessee, has been engaged in the distribution of fertilizer, fertilizer materials, nitric acid, anhydrous ammonia, nitrogen solution, in bulk and in bags, dry and liquid, at points and places within the State of North Carolina.

2. That it is now in the process of constructing a plant at Tunis, Hertford County, North Carolina, for the sale and distribution of the above-named fertilizers and fertilizer materials for which application for transportation thereof is herein made.

3. That it now has constructed a large storage tank from which it will deliver said materials from the origin point of Tunis to points and places in North Carolina pending the completion of its manufacturing facilities in the fall of 1969.

4. That Farmers Chemical is in need of transportation now and will need in the future the service of common carriers to transport its products between points and places within the State of North Carolina.

5. That Tidewater Transit Co., Inc., is certificated by this Commission to engage in the transportation of property by motor carrier in the manner set forth in its Common Carrier Certificate No. C-317.

6. That Tidewater Transit Co., Inc., has the equipment, is financially able and otherwise qualified to engage in the transportation of property in the manner sought by the instant application.

7. That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and that the applicant is fit, willing and able to properly perform the proposed service on a continuing basis.

CONCLUSIONS

The evidence before the Commission tends to show that the use of liquid fertilizer and fertilizer materials and other commodities sought by the applicant herein is increasing each year; that a peak in the movement of these properties develops in the months of April, May and June, the season when such materials are generally used by the farmers of

North Carolina; that there is a demand and need for service of the applicant by the shippers and receivers of the commodities sought to be transported. We are therefore of the opinion and conclude that the evidence in this case supports the granting of the authority sought by the applicant.

IT IS THEREFORE ORDERED That Common Carrier Certificate No. C-317 issued by this Commission to Tidewater Transit Co., Inc., Kinston, North Carolina, be amended so as to authorize the additional authority granted as set forth in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED That a copy of this order be transmitted to Tidewater Transit Co., Inc., and to the attorney for the applicant.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-380 SUB 14

Tidewater Transit Co., Inc.
P. O. Box 189
Kinston, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

The transportation of fertilizer and fertilizer materials, nitric acid, anhydrous ammonia and nitrogen solution, in bulk and in bags, dry and liquid, between points and places in Hertford County, and between points and places in Hertford County and all points and places within the State of North Carolina.

DOCKET NO. T-1408

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Arthur Tab Williams, 5446 North Cherry Street,) RECOMMENDED
Winston-Salem, North Carolina - Application) ORDER
for contract carrier authority)

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on November 7, 1967, at 2:00 p.m.

BEFORE: E. A. Hughes, Examiner

APPEARANCES:

For the Applicant:

Claude M. Hamrick
Spry, Hamrick & Doughton
Attorneys at Law
603 Waughtown Street
Winston-Salem, North Carolina

For the Protestants:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: Petroleum Transportation, Inc.
Associated Petroleum Carriers
Quality Oil Transport
Southern Oil Transportation Company
M & M Tank Lines, Inc.
East Coast Transport Co., Inc.
Maybelle Transport Company
H & P Transit Co.
Public Transport Corporation
O'Boyle Tank Lines, Inc.
Kenan Transport Company

Wright T. Dixon, Jr.
Bailey, Dixon & Wooten
Attorneys at Law
Insurance Building
P. O. Box 2246, Raleigh, North Carolina
For: Petroleum Transit Company, Inc.
(Schwerman Trucking Co.)

HUGHES, EXAMINER: By application filed with the Commission on September 21, 1967, Arthur Tab Williams, 5446 North Cherry Street, Winston-Salem, North Carolina, seeks appropriate contract carrier authority under the Public Utilities Act to engage in the transportation of Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, on a statewide basis.

Notice of said application with a description of the authority sought, together with the time and place of hearing was published in the Commission's Calendar of Hearings issued on October 3, 1967. Within apt time, joint protest to the granting of said application was filed by Petroleum Transportation, Inc., Gastonia, North Carolina; Associated Petroleum Carriers, Spartanburg, South Carolina; Quality Oil Transport, Winston-Salem, North Carolina; Southern Oil Transportation Company, Inc., High Point, North Carolina; M & M Tank Lines, Inc., Winston-Salem, North Carolina; East Coast Transport Co., Inc., Goldsboro, North Carolina; Maybelle Transport Company, Lexington, North Carolina; H & P Transit Co., Kinston, North Carolina; Public

Transport Corporation, Troutman, North Carolina; O'Boyle Tank Lines, Inc., Washington 14, D.C.; and Kenan Transport Company, Durham, North Carolina, and an individual protest was filed by Petroleum Transit Company, Inc.

All parties were present and represented by counsel.

It appears from the evidence that Applicant is the President and principal owner of A. T. Williams Oil Company, a corporation engaged in the retail sale of petroleum products at twenty-two (22) service stations in North Carolina and the wholesale of such products to certain of its customers; that the transportation needs of A.T. Williams Oil Company are now and have heretofore been met by the use of its own equipment in private carriage; that the application herein, which if granted would have the effect of separating the transportation from the oil business, was filed on the advice of Applicant's accountants and legal office; that most of the products of A.T. Williams Oil Company are hauled out of the Friendship Terminal area with an occasional load picked up at the Selma Terminal; that in the event the authority applied for is granted, equipment now owned by A.T. Williams Oil Company will be purchased by Applicant for use in the proposed contract carrier operation; that no common or contract carrier has ever transported any petroleum products for the A.T. Williams Oil Company in North Carolina, and that Applicant is willing to restrict the authority sought to provide service solely to A.T. Williams Oil Company for shipments between said corporation and its retail outlets and its wholesale customers.

Protestants contend, among other things, that the service proposed by Applicant does not conform with the definition of a contract carrier within the meaning of G.S. 62-3(8) and G.S. 62-3(9) in that the transportation requirements of the commodity applied for are not such as would require any special type of service not available by the protestants and other authorized carriers; that the granting of said application would create new operating authority between the points designated in the application, which said authority would be based upon contracts with shippers who had heretofore not used either common or contract carriers, but who do not require dedicated equipment or any special services which cannot be rendered by common carriers between the origins and destinations sought to be served by the applicant; that all of the protestants are common carriers of petroleum and petroleum products who have the authority which would enable them to handle the transportation requirements for A. T. Williams Oil Company; that there is nothing unusual or special about the transportation requirements of A.T. Williams Oil Company which could not be easily handled by a common carrier of petroleum products and that their companies are ready, willing and able to handle the hauling for said corporation and would welcome the opportunity to do so; that most of the carriers have idle equipment which is suitable for this transportation and that

the applicant in this case has failed to meet the statutory criteria and the rules and regulations of this Commission in his application for the reason that the proposed operation of Applicant does not conform to that of a contract carrier and that the granting of the permit would not only unreasonably impair the efficient service of existing carriers, but would be contrary to the public interest and the transportation policies as prescribed by the Public Utilities Act.

Briefs were filed.

Upon consideration of the application, the evidence adduced at the hearing and the argument relating to law and fact in the briefs submitted by parties, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act.

2. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates or rail carriers.

3. That the proposed service will not unreasonably impair the use of the highways by the general public.

4. That the applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

5. That the proposed operations will be consistent with the public interest and the policy declared in the public Utilities Act.

CONCLUSIONS

In support of their positions, Protestants, among other things, make reference to the Commission's Explanation of the North Carolina Truck Act of 1947 and in particular to the provisions explaining the definition of a contract carrier which, as stated, is, in all important aspects, identical to the present law. The paragraph in the Explanation referred to by Protestants reads as follows:

"It may be stated as a general rule that it requires (1) individual contracts and (2) specialized service to distinguish a contract carrier from a common carrier. The specialized service varies according to the peculiar needs of the particular shipper. It may consist of furnishing equipment especially designed tc haul a certain kind of property, or it may consist of the use of employees trained in loading, unloading, or handling a particular commodity. It may consist of services in addition to the usual transportation service, such as packing goods or the

installation of machinery, or it may consist of devoting all or a particular part of the carrier's services and equipment to the use of the particular shipper. If the carrier does not limit himself to both individual contracts and some specialized service, his operations cannot be distinguished from those of a common carrier. Unless his operations can be so distinguished, he is a common carrier."*

*Emphasis added.

Since the evidence clearly shows that an individual contract has been entered into between Applicant and Shipper and that all of Applicant's services and equipment will be devoted to the use of said Shipper, the requirements, as set forth in the above explanation, have been met.

G.S. 62-114, as amended by the 1967 Legislature, reads as follows:

"§ 62-114. Contract carriers; issuance of permits; terms and conditions.-When the Commission issues a permit to any contract carrier, it shall specify in the permit, or amendment thereto, the business of the contract carrier covered thereby and the scope thereof and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect to the operations of such carrier, the requirements established by the Commission under §62-261 provided, that the permit shall list the name of all contract parties the carrier is authorized to serve, and no additions or substitutions of contracts shall be made without approval of the Commission, and the Commission may adopt rules and regulations limiting the number of contract parties served by a contract carrier so that contract carriers shall not hold themselves out to serve in the manner of common carriers."*

*Emphasis added.

While strongly contending that the application in this case should be denied completely, Protestants assert that a permit should in no event be granted which would give the applicant the status of an unlimited contract carrier with statewide rights and that any permit granted to Applicant should be specifically limited to transportation under contract with and for the account of A.T. Williams Oil Company. The applicant has declared this to be his sole purpose.

The Hearing Examiner concludes that Applicant has satisfied the burden of proof as required by statute and is entitled to a permit authorizing transportation of Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, as a contract carrier by motor vehicle under

individual bilateral contract between Applicant and A.T. Williams Oil Company, such authority to be specifically restricted to transportation between said Shipper and its retail outlets and its wholesale customers.

IT IS, THEREFORE, ORDERED That Arthur Tab Williams, 5446 North Cherry Street, Winston-Salem, North Carolina, be issued a contract carrier permit authorizing the transportation of property in intrastate commerce as particularly set out and restricted in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED That Applicant file with this Commission a list of equipment, evidence of appropriate insurance, schedule of minimum rates and charges, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of January, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. T-1408

Arthur Tab Williams
5446 North Cherry Street
Winston-Salem, North Carolina

Contract Carrier Authority

EXHIBIT A

Transportation of Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, between points and places in North Carolina under individual bilateral contract with A.T. Williams Oil Company.

Restriction: This authority is restricted to transportation solely for the account of A.T. Williams Oil Company for service to its retail outlets and to its wholesale customers.

DOCKET NO. T-1408

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Arthur Tab Williams, 5446 North Cherry Street, Winston-Salem, North Carolina - Application for contract carrier authority) ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on November 7, 1967, at 2:00 p.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Claude M. Hamrick
Spry, Hamrick & Doughton
Attorneys at Law
603 Waughtown Street
Winston-Salem, North Carolina

For the Protestants:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: Petroleum Transportation, Inc.
Associated Petroleum Carriers
Quality Oil Transport
Southern Oil Transportation Company
M & M Tank Lines, Inc.
East Coast Transport Co., Inc.
Maybelle Transport Company
H & P Transit Co.
Public Transport Corporation
O'Boyle Tank Lines, Inc.
Kenan Transport Company

Wright T. Dixon, Jr.
Bailey, Dixon & Wooten
Attorneys at Law
Insurance Building
P. O. Box 2246, Raleigh, North Carolina
For: Petroleum Transit Company, Inc.
(Schwerman Trucking Co.)

WILLIAMS, COMMISSIONER: This matter was heard by Hearing Examiner, E. A. Hughes, Jr. on November 7, 1967. A Recommended Order was issued by Examiner Hughes, dated January 9, 1968. The protestants duly filed Exceptions to the Recommended Order and requested oral argument on the Exceptions before the Full Commission. By Order, dated January 29, 1968, this request was granted and oral argument was had before the Full Commission on February 22, 1968.

Upon consideration of the competent and material evidence of record, the Recommended Order, the Exceptions thereto and the argument thereon, the Commission is of the opinion that the Findings of Fact and Conclusions of Law contained in the Recommended Order are supported by the evidence and that the Exceptions thereto should be denied and the Recommended

Order adopted, affirmed and approved and made the Order of the Commission.

IT IS, THEREFORE, ORDERED that the Exceptions of the protestants to the Recommended Order, dated January 19, 1968, are overruled and denied and the Recommended Order is approved, affirmed and adopted as the Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1408
Arthur Tab Williams

ELLER, COMMISSIONER, DISSENTING: The Applicant in these proceedings unequivocably stated that the application had nothing to do with the inadequacy of existing authorized transportation service in North Carolina, but was based solely upon advice from his attorneys and accountants that it would be an advantage to him personally to obtain authority and handle the corporation's transportation authority. Applicant further admitted there is nothing distinct or unique about his company's transportation requirements relative to authorized common carriers and that adequate authorized common carriage was available for the needs of the company. There is likewise evidence in the record from Protestants of their availability and desire to fill any transportation needs for the A.T. Williams Oil Company.

The statutory criteria for the granting of a contract carrier permit by the Utilities Commission is provided by G.S. 62-262(i): "If the application is for a permit, the Commission shall give due consideration to:

"(1) Whether the proposed operations conform with the definition in this chapter of a contract carrier,

"(2) Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,

"(3) Whether the proposed service will unreasonably impair the use of the highways by the general public,

"(4) Whether the applicant is fit, willing, and able to properly perform the service proposed as a contract carrier,

"(5) Whether the proposed operations will be consistent with the public interest and the policy declared in this chapter; and

"(6) Other matters tending to qualify or disqualify the applicant for a permit."

The Commission has amplified the statutory criteria in its Rule R2-10, as amended:

"Contract carrier authority for the transportation of passengers or property will not be granted unless the proposed service conforms to the definition of a contract carrier as defined in G.S. 62-3(8) and applicant meets the burden of proof required under the provisions of G.S. 62-262(i) and Rule R2-15(b)."

Rule R2-15(b) provides that in an application for a contract carrier permit "proof is required that one or more shippers or passengers have a need for a specific type of service not otherwise available by existing means of transportation."

This Commission until now has consistently interpreted contract carriage as embracing something more than transportation by a carrier under contract with a shipper. It has required more than a mere personal desire or private purpose.

In the Explanation of the North Carolina Truck Act of 1947 issued by the Utilities Commission the provisions of the former section of the law defining contract carrier (which is in all pertinent aspects identical to the present law) is explained as follows:

"It may be stated as a general rule that it requires (1) individual contracts and (2) specialized service to distinguish a contract carrier from a common carrier. The specialized service varies according to the peculiar needs of the particular shipper. It may consist of furnishing equipment especially designed to haul a certain kind of property, or it may consist of the use of employees trained in loading, unloading, or handling a particular commodity. It may consist of services in addition to the usual transportation service, such as packing goods or the installation of machinery, or it may consist of devoting all or a particular part of the carrier's services and equipment to the use of the particular shipper. If the carrier does not limit himself to both individual contracts and some specialized service, his operations cannot be distinguished from those of a common carrier. Unless his operations can be so distinguished, he is a common carrier."

Where the element of specialization or some distinct or unique transportation requirement not available by common carriage has been absent, the Commission has consistently denied applications for contract carrier permits. In the application of C.H. McBane, d/b/a Mc-Bane-Sonny Oil Company, Docket No. T-787, the Commission denied a contract carrier permit for petroleum authority where the shipper witnesses

were unable to give any reasons why they needed the service of a contract carrier rather than the service of a common carrier and where the evidence showed that adequate common carrier transportation service was available.

In a later case involving the application of T. P. Ashford Oil Company for similar contract authority to haul petroleum products in Docket No. T-1070, the shipper witnesses stated that no specialized service was required in the transportation of petroleum products, that common carrier service was available but that the sole purpose of desiring to use the service of a contract carrier was to award the transportation business to a particular company. In denying this application, the Commission stated:

"It appears from the evidence of record in this proceeding that it is the policy of the Arkansas Fuel Oil Corporation to channel its transportation business among those who distribute its products whenever possible and to use common carrier service only for convenience. It is the opinion of the Commission that an arrangement of this type will destroy the common carrier transportation service now offered the general public throughout the State of North Carolina, particularly where it is readily admitted that the shipper does not require any special service, does not require that the carrier dedicate equipment to its use, nor does it require any other specialized service not offered by a common carrier.

"In a decision before the Supreme Court of the State of Utah, the Court has this to say:

" 'An application for a contract carrier permit may properly be denied where the evidence shows that existing transportation facilities provide reasonably adequate service to the contracting shipper.' Rudy v. Utah Pub. Service Commission (1954) - Utah -, 265 P2d 400.

"It is not the purpose of the Commission in this opinion to say that all contract carrier operations are detrimental to transportation in intrastate commerce. There is a place for contract carrier operations in the transportation system, and the Legislature so recognized this fact in its passage of the North Carolina Truck Act. It is the opinion of the Commission, and it has so stated in its Explanation of the North Carolina Truck Act, Article 6B of the General Statutes of North Carolina, that a contract carrier undertakes to serve a particular shipper and, as a general rule, offers specialized service to distinguish it from a common carrier, specialized service varying according to the peculiar needs of the particular shipper. If the carrier does not offer some specialized service, does not dedicate its equipment to the use of the contracting shipper, but merely offers to transport a product between two given points, the same as common carriers, its operation cannot be distinguished from that of a common carrier and, therefore, does not

comply with the definition of a contract carrier as set forth in G.S. 62-|2|.7(|4)."

A more recent case where the Commission denied a contract carrier permit involving petroleum products is in the matter of the application of Tom B. York, Docket No. T-|057, Sub 1, where the Commission found the service applicant proposed to render was the same kind of service rendered by common carriers and that there were several certificated common carriers authorized to render the service. In this case, the Commission further concluded the granting of the permit would unreasonably impair the efficient public service of the carriers and would be inconsistent with the public interest and the transportation policy.

Based upon Applicant's own evidence related to the statutes, rules, and previous holdings of the Commission, I must conclude that the authority here sought does not conform to the definition of a contract carrier and will adversely affect existing authorized transportation service. I do not believe the Commission is authorized to grant authority for a purely private reason or to satisfy a purely personal preference, however genuine and well-motivated such private reasons and desires may be.

Thomas R. Eller, Jr., Commissioner

I join in this dissent John W. McDevitt, Commissioner

DOCKET NO. T-825, SUB |04

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Suspension and Investigation of Proposed Revised Rates and Charges on Unmanufactured Tobacco, Leaf or Scrap, Scheduled to Become Effective July |2 and 24, |967	ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on January 3, |968

BEFORE: Chairman Harry T. Westcott, Presiding; Commissioners Thomas R. Eller, Jr., John W. McDevitt, M. Alexander Biggs, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For Respondents:

J. Ruffin Bailey and Clarence H. Noah
Bailey, Dixon and Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For Protestants:

Malcolm B. Seawell
Attorney at Law
Wachovia Bank Building
Raleigh, North Carolina
By and Through: George A. Goodwyn
Assistant Attorney General
For: Tobacco Association of the United States, and Leaf Tobacco Exporters Association

For Intervenors:

Walton K. Joyner and William T. Joyner
Joyner and Howison
Attorneys at Law
P. O. Box 109, Raleigh, North Carolina
For: Flu Cured Tobacco Cooperative Stabilization Corporation, and Tobacco Growers Services, Inc.

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

For the Using and Consuming Public:

George A. Goodwyn
Assistant Attorney General
Old Y.M.C.A. Building
Corner of Edenton and Wilmington Streets
Raleigh, North Carolina

BY THE COMMISSION: This investigation was instituted by the Commission following the filing, on statutory notice, by North Carolina Motor Carriers Association, Inc., Agent (NCMCA), of its Motor Freight Tariff No. 8-I, N.C.U.C. No. 81, and Supplement No. 1, thereto, scheduled to become effective July 12 and 24, 1967. The schedules were published by NCMCA for account of certain of its carrier members holding authority from this Commission to engage in the transportation of unmanufactured tobacco, leaf or scrap, in common carriage by motor vehicle between points and places within the State in intrastate commerce. The involved tariff schedules, proposed to make effective for account of the tobacco carriers proposing to participate therein, on the dates hereinbefore named, revised rates, rules, regulations, commodity descriptions, and practices in connection therewith, for application on shipments of unmanufactured tobacco, leaf or scrap, moving in truckload and less-than-truckload amounts in North Carolina intrastate commerce.

By Order of July 11, as amended September 28, 1967, the Commission suspended the revised adjustment, in part, to and

including November 8, 1967, designating the suspended matter as follows:

"North Carolina Motor Carriers Association, Inc., Agent, Motor Freight Tariff No. 8-I, N.C.U.C. No. 8: Rules, regulations and commodity descriptions as shown in Items 10 through 200, Pages 2 to 5, inclusive, insofar as same have application in connection with rates published in Section I, Pages 7 through 12, thereof; also Supplement No. 1, thereto, Section I thereof,"

instituted an investigation to determine the justness, reasonableness and lawfulness thereof, and assigned the matter for hearing on September 26, 1967. The orders made carriers proposing to participate in the suspended schedules respondents, and placed upon them, under G.S. 62-75 and 62-134, the burden of proving the justness and lawfulness of the proposed revision. By subsequent continuances and orders, the hearing was continued to January 3, 1968, and the suspension and deferment of the application of involved schedules was extended to and including June 6, 1968.

The proposed revision was protested by the Tobacco Association of the United States, the Leaf Tobacco Exporters Association, and the North Carolina Department of Agriculture. The Flu Cured Tobacco Cooperative Stabilization Corporation and Tobacco Growers Services, Inc., and the Attorney General, through George A. Goodwyn, Assistant Attorney General, representing the Using and Consuming Public, were permitted to intervene. By Order of December 4, 1967, the Department of Agriculture was allowed to withdraw from the proceeding.

Under the proposed (suspended) adjustment, the Description R rates on unmanufactured tobacco (redried), leaf or scrap, and related commodities, in hogsheads, casks, tierces, machine pressed bales, barrels, boxes or cases, volume minimum 25,000 pounds, are nothing more or less than the present rates brought forward without change, except that a minimum rate of 20 cents per 100 pounds has been observed. The proposed Description A (not redried) rates on shipments in hogsheads, and like containers, minimum weight 25,000 pounds per vehicle used, are based on increasing the present rates 10 percent, subject to observing a scale (Appendix A hereto) for the distances as maximum. In some instances, individual carriers brought the present rates forward without change and propose to continue to apply the same rates on both redried and other than redried tobacco.

The proposed (suspended) rates on tobacco, not redried, loose leaves or scrap, in bags, bales, not machine pressed, baskets, bundles or sheets, minimum weight 25,000 pounds in standard trailers, as described in Description B, reflect a differential of 6 cents per 100 pounds over the proposed Description A (not redried) rates, subject to the observance of present rates as minimum.

The proposed rates on green (not redried) tobacco, loose leaves or tied, or scraps, in cubical pack, hogsheads, casks, tierces, boxes, barrels or cases, minimum weight 36,000 pounds per vehicle used when in Standard 40 foot trailers, as shown under proposed Description D, reflect a reduction formula resulting in rates that are from 2 to 6 cents per 100 pounds less than the proposed Description A (not redried) rates. The suspended rates on tobacco (redried), leaf or scrap, including cuttings, stems, and reconstituted tobacco, in hogsheads, casks, tierces, boxes, barrels, machine pressed bales and cases, minimum weight 36,000 pounds per vehicle used, except as noted, as shown in proposed Description C, reflect differentials under the proposed redried rates subject to the lower minimum of 25,000 pounds.

The proposed less-than-truckload rates are double the proposed sheet and basket rates.

At the conclusion of an opening statement by Chairman Westcott, presiding, it was announced that Mr. Malcolm Seawell was ill and had requested that he be excused from filing an initial appearance in order that he might appear later as his doctor permits. The request was granted and Mr. Seawell's witnesses were later presented by Mr. George Goodwyn, Assistant Attorney General, in agreement with an understanding and in cooperation with Mr. Seawell.

A witness for respondents testified in regard to the carrier's need for additional revenues because of their substantially increased operating costs and presented an exhibit setting forth a mileage scale, reproduced in Appendix A hereto, which was used as an overall basis in revising the present rates on green, or other than redried tobacco. The witness testified that in drawing up the scale the expenses of the carriers per operating mile were taken into consideration in order to determine the level of the rates necessary to yield the carriers' compensatory revenue based on the cost of doing business in 1965 and 1966. The witness further testified that at the time the scale was composed it was impossible for the carriers to have foreseen the substantial increase in the costs of equipment, parts, supplies and labor, that occurred in January, 1967, and shortly thereafter, and is continuing.

The witness proceeded with an explanation of the mechanics of the proposed adjustment. The testimony tends to show that the present rates on shipments in hogsheads and similar containers are applicable on both redried and green, or other than redried tobacco, and that those rates were brought forward without change for application on shipments of redried tobacco, except for the observance under the scale, of a rate of 20 cents per 100 pounds as minimum. The proposed or suspended rates on green tobacco in hogsheads were arrived at by increasing the present figures ten (10) percent observing rates reflecting the scale for the short highway distances as maximum. The testimony offered by the

witness in justification for applying a higher level of rates on green tobacco than on redried tends to show that truckload shipments of redried tobacco will average twelve (12) percent more in weight, that in the green state tobacco is a perishable commodity, is handled on a "call and demand" basis and that the ratio of empty return to loaded movement of equipment employed in handling the commodity in the green state is very high.

The testimony of the witness shows further that the Description B rates proposed for application on shipments of green tobacco in sheets or baskets were made six (6) cents per 100 pounds higher than the Description A rates proposed for application on shipments of green tobacco in hogsheads and like containers, observing the present rates as minimum. In justification for observing the present rates as minimum, the witness testified that the proposed adjustment was the first stage of carriers' intention to bring all rates to scale over a period of three years but that they did not think it prudent or proper at this time to reduce rates because their first and most urgent need was for additional revenues and further, that it was not proposed at this time to increase all rates to scale.

Respondents presented several witnesses that offered justification for using an arbitrary of 6 cents over the hogshead rates as a basis for arriving at the rates proposed for application on shipments of green tobacco in sheets or baskets. The testimony tends to show that the cost of handling tobacco in sheets is substantially greater than that incurred in handling shipments in hogsheads and like containers. The witnesses testified that the additional costs of handling sheet tobacco was in a large measure due to the additional time required for loading and unloading. Tobacco in hogsheads is usually loaded at one location and can be loaded and unloaded rapidly, while in the course of normal operations a shipment of sheet tobacco usually originates at two or three different warehouses and the loading and unloading of shipments in sheets is otherwise time consuming. The differential of 6 cents results in additional revenue of $15.00 on a minimum load of 25,000 pounds and respondents hope that this will compensate them for the additional costs incurred in the handling of shipments in sheets.

A witness for respondents further testified that Epes Transport System, Forbes Transfer, Pitt County Transportation Company and Vance Trucking had "flagged out" of the increased rates proposed to Rocky Mount and Winston-Salem and propose, for the most part, to maintain the present rates to those points.

It is proposed to increase the minimum charge for the handling of a single less-than-truckload shipment from $2.50 to $4.00. In justification of this proposed action the witness presented an exhibit tending to show that the average cost to Burton Lines of processing a bill of lading

is $2.485, leaving practically nothing of the present $2.50 minimum charge to cover the transportation costs. The witness testified that the proposed minimum charge would not cover his company's direct or out-of-pocket costs incident to the transportation of a minimum charge shipment.

Respondents presented an exhibit showing the operating ratios of six of the more important tobacco carriers for the year 1955 in comparison with their operating ratios for the year 1966. The combined operating ratio of the six carriers for the year 1955 was 95.7 percent, in comparison with a combined ratio of 98.8 percent for 1966. The exhibit and the testimony of the witness tends to show that the carriers' combined operating ratic worsened by 3.1 percent during the period 1955-1966, and this notwithstanding the fact that since 1955 the carriers have increased the carrying capacity of their vehicles by 28.5 percent.

The witness also offered an exhibit tending to show that the costs of parts has increased substantially since 1964. The exhibit shows that on the smaller parts the carriers experienced an increase in costs averaging 14.4 percent since 1964 and that with the larger parts added the average increase in 1967 over 1964 was seven (7) percent. The price of purchasing a tractor is shown to have increased 5.8 percent since 1965.

The witness, an employee of Burton Lines, testified that the increase in the minimum wage in February of 1967 resulted in proportionate increases in the wages of all of its employees and that a further increase in the minimum wage was expected in February, 1968. A number of additional exhibits were offered tending to show that the carriers' operating ratios are worsening and that the costs of performing a transportation service in North Carolina intrastate commerce are increasing.

Several additional witnesses of respondents offered testimony in corroboration of that placed in the record by their principal witness.

The position of the Tobacco Association of the United States and the Leaf Tobacco Exporters Association is one in opposition to the continuance or publication of rates that exceed the scale for the distances. They also oppose the observance of a minimum rate of 20 cents and express the opinion that such rate should not exceed 18 cents. The witnesses for these protestants agree that the carriers are in need of additional revenues. They would not object to rates based on a scale, provided it was observed uniformly, and have no fault to find with the theory of adding an arbitrary to the rates on shipments in hogsheads to arrive at rates for application on shipments in sheets and baskets.

Mr. August Heist, Traffic Manager, R. J. Reynolds Tobacco Company, Winston-Salem, N. C., appeared without counsel and testified in his own behalf in support of the rates

published to Winston-Salem by Epes Transport System and several other carriers. This witness did not feel that either the present or proposed adjustments was a "hodge-podge" of rates and does not believe in the theory of using a mileage scale in constructing rates for application on shipments of unmanufactured tobacco, but is of the opinion that each market should "stand on its own bottom".

Mr. Harvie A. Carter, Traffic Manager, Epes Transport System, a respondent herein, was presented as a witness for his company by Mr. George A. Goodwyn, Assistant Attorney General. The witness's appearance was apparently for the purpose of explaining why his company "flagged out" or refused to take the increases proposed by certain of the other carriers in the rates to Rocky Mount and Winston-Salem. The witness stated that the independent action of his company in "flagging out" of the proposed increased rates to Rocky Mount and Winston-Salem was taken as a matter of principle since his company had made commitments or agreed on a certain level of rates to those points. The witness stated that he felt the rates proposed to be maintained by his company under "flag outs" were reasonable.

The Assistant General Manager of the Tobacco Cooperative Stabilization Corporation (Stabilization) explained the function of that organization. Stabilization receives from growers in those states who are eligible for government price supports the tobacco that has been offered at auction for sale and has failed to receive a bid above the support price. The witness testified that Stabilization takes such tobacco after having advanced the support price through its agent, the auction warehouse, the growers agent for that purpose, has it dried and stored and eventually sells it. In the event it sells for more than the advanced price, plus interest, and the cost of handling, the surplus is distributed to its member growers.

Stabilization handled approximately 194,000,000 pounds of the flue-cured tobacco marketed in North Carolina during the 1967 season and has a legitimate interest in this matter.

This protestant-intervenor feels that the motor carriers are entitled to a reasonable return on their investment and is not opposed to the principle of basing rates on a mileage scale. It nevertheless feels that the proposed increases in the rates for relatively short hauls should be more moderate and that the differential of 6 cents between the rates in hogsheads and those proposed for application on shipments in sheets may be too great.

The Commission's Staff presented several exhibits which tend to show that the proposed rates interspersed among rates brought forward without change result in an adjustment where some of the rates do not reflect any consistent level. An additional exhibit was also tendered showing the North Carolina operating ratios (before taxes) for the years 1960, 1964, 1965 and 1966 of the carriers holding authority to

transport unmanufactured tobacco in North Carolina intrastate commerce. The exhibit shows the following ratios for six of the carriers, among the nine or ten that handle the preponderance of the flue-cured tobacco moving in North Carolina intrastate commerce.

Carrier	N. C. Operating Ratios (Before Taxes) 1965	1966
Blair Transit Co.	89.5	109.2
Burton Lines, Inc.	92.4	96.4
*Epes Transport System, Inc.	96.6	100.3
Forbes Transfer Co., Inc.	95.7	97.9
North State Motor Lines, Inc.	99.9	98.5
Vance Trucking Company	96.3	98.9

* - Total Company

The figures tend to show that the operating ratio of these carriers, with one exception (North State Motor Lines), were higher in the year 1966 than in the preceding year. The Commission's Director of Traffic testified that the operating ratios were taken from the official records of this Commission on file in its Accounting Department.

Based on the evidence adduced in this proceeding and the records of the Commission, we make the following

FINDINGS OF FACT

(1) Respondent common carriers participating in the tariff schedule under suspension in this proceeding, containing intrastate rates and charges on unmanufactured tobacco, leaf or scrap, and related commodities, are subject to the jurisdiction of, and regulation by, this Commission, and said carriers are in need of additional revenues, and, except as hereinafter noted, should be allowed to make effective the proposed increases in their rates and charges to meet the increased costs of operation and enable them to preserve and continue all motor carrier transportation services now afforded to the using and consuming public of the State engaged in the production, distribution and marketing of unmanufactured tobacco and its products and by-products.

(2) The proposed adjustment is in the nature of a general increase in rates and charges for revenue purposes, although in some instances it is proposed to continue the present figures. The preponderance of the proposed changes result in increases, although a few represent reductions.

(3) Respondents' present rates and charges are not, in some instances, sufficient to permit them to continue an adequate, economical and efficient service to all shippers and receivers. Respondents transporting the preponderance of the unmanufactured tobacco movement have unfavorable

operating ratios. These respondents, except Blair Transit, have authority from this Commission to transport commodities, other than tobacco, in North Carolina intrastate commerce and the record shows that some also have interstate authority. Burton Lines has rather extensive general commodity authority and is also authorized to transport in intrastate commerce, machinery, air conditioning equipment and supplies and heavy concrete products. The carrier also has interstate authority. Epes Transport, North State Motor Lines and Vance Trucking Company have intrastate authority to transport accessories and supplies used or useful in the manufacture, processing, storage, marketing and transportation of tobacco or tobacco products. Epes, Forbes and North State have general commodity authority. Vance Trucking Company has authority covering the transportation of building materials and supplies and also interstate authority.

(4) The revenues and expenses of the carriers as shown in the records of the Commission are apportioned on a formula, generally speaking, a mileage prorate, to arrive at a percentage of property moving within and without the State of North Carolina. This formula fails to separate actual intrastate from interstate movements in order to arrive at competent operating ratios. Neither are the revenues and expenses of the carriers separated to show actual revenues and expenses for the transportation of intrastate shipments of tobacco only.

(5) The interstate rates and charges applicable on general commodities moving to, from, and within North Carolina, reflect a higher level, mile for mile, than intrastate rates and charges applicable between points in the State. The record herein shows that unmanufactured tobacco is not subject to rate regulation in interstate commerce but that the carriers publish and observe rates that have recently been increased observing the scale set forth in Appendix A hereto that has also been used as a basis for revising the rates here in issue. Consolidated systemwide interstate and intrastate revenues and expenses tend to produce lower and more favorable operating ratios than the intrastate revenues and expenses incident to the handling of unmanufactured tobacco traffic would produce if such were separated.

(6) Respondents, except to the extent hereinafter noted, should be allowed to make the proposed increases in their rates and charges effective.

(7) Respondents' proposal to increase the minimum charge for a single shipment from $2.50 to $4.00 is not just and reasonable. A minimum charge of $3.50 per shipment is fair, just and reasonable.

(8) The proposal of respondents to observe a minimum rate of 20 cents per 100 pounds in revising the rates on shipments, in hogsheads and similar containers, is not just

and reasonable for distances under 21 miles. A minimum rate of 18 cents is fair, just and reasonable for such distances.

CONCLUSIONS

G.S. 62-146(h) requires this Commission to give due consideration, among other factors, to the effect of rates upon movement of traffic by the carrier or carriers, for which rates are prescribed; to the need in the public interest of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service, and to the need of revenues sufficient to enable such carriers, under honest and efficient management, to provide such service.

Section 146(g) of Chapter 62 provides that in any proceeding to determine the justness or reasonableness of any rate of any common carrier by motor vehicle, such rates shall be fixed and approved, subject to the provisions of Section 146(h) on the basis of operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues.

This does not mean, in our opinion, that systemwide interstate and intrastate revenues and expenses may be accepted to arrive at a common operating ratio for the purpose of making intrastate rates for application on shipments of unmanufactured tobacco.

The operating ratios of the carriers shown in the exhibit presented by the Commission's Staff, as hereinbefore set forth, are among the nine or ten carriers handling a preponderance of the unmanufactured tobacco moving in North Carolina intrastate commerce. Their ratios for the year 1966 range from a low of 96.4 to a high of 100.3. We have heretofore considered that rates and charges of motor vehicle carriers which produce an operating ratio above 95 fail to provide, in the public interest, an adequate and efficient transportation service (T-825, Sub 50. Supra). The operating ratios do not reflect any actual separation of interstate and intrastate revenues and expenses or any separation of tobacco revenues and expenses from those on other traffic. In giving consideration to the revenues derived from, and expenses of, transporting unmanufactured tobacco moving wholly in intrastate commerce, the above tabulated operating ratios are important in determining the reasonableness of the rates here in issue.

The movement of unmanufactured tobacco is seasonal in nature and the amount of time required to load and unload shipments, particularly of green tobacco, is greatly in excess of the time required for the loading and unloading of the usual truckload of general commodity traffic. The tariff schedule here in issue does not provide a detention charge for detention of equipment beyond a reasonable free time period. The cost of transporting unmanufactured

tobacco is generally greater than the cost of transporting truckloads of class rated and general commodity traffic.

In addition to the foregoing, interstate class rates and charges on which a substantial amount of traffic moves reflect a higher level, mile for mile, than rates applicable on like traffic moving in North Carolina intrastate commerce. The rates applicable on general class and commodity rated traffic moving in North Carolina intrastate commerce were increased five (5) percent May 1, 1967, under an order of this Commission.

The operating ratios of the carriers hereinbefore enumerated do not reflect a separation of interstate and intrastate revenues and expenses as contemplated by G.S. 62-146(h). A rate must not only be fair, just and reasonable to the consumer but fair, just and reasonable to the carrier. The carriers respondents herein engaged in the transportation of tobacco perform a significant service to an important segment of the public shipping and receiving tobacco in North Carolina intrastate commerce and must have rates that provide sufficient revenues to permit them to continue their important service to the public.

The North Carolina Supreme Court, in State v. State, 243, N.C. 12, said that the order of the Utilities Commission increasing intrastate rates of the state rail carriers so that such rates would conform with an increase in interstate rates allowed by the Interstate Commerce Commission was invalid where the order was unsupported by proof of the fair value of the properties of the carriers used and useful in conducting their intrastate business, separate and apart from their interstate business. Although a different section of Chapter 62 governs rate-making for rail carriers, the principle of separating interstate and intrastate revenues and expenses applies to both modes of transportation.

Costs, however, have increased since 1952 when increases were last made in the rates applicable on unmanufactured tobacco, although the minimum truckload weight on shipments of tobacco was, comparatively recently, increased from 20,000 to 25,000 pounds. In addition, the record shows that the respondents obtained some small amount of relief by an increase in the weight carrying capacity of their equipment. The carriers have shown that costs for equipment, parts and labor have increased substantially since their last rate increase and particularly since January of last year.

In consideration of the record in this proceeding and the foregoing Findings of Fact, we conclude that the proposed revision in rates and charges, except as set forth in Findings of Facts (7) and (8), and practices in connection therewith, should be allowed to become effective.

IT IS THEREFORE ORDERED:

(1) That the proposed minimum charge for a single shipment be revised to be $3.50 rather than $4.00.

(2) That the minimum rate to be observed under the scale (Appendix A hereto) for distances not exceeding 20 miles shall be 18 cents, rather than 20 cents per 100 pounds, and that all rates based upon or related to said rate shall be revised accordingly.

(3) That the Order of Suspension dated July 11, 1967, as amended, be, and the same is hereby, vacated and set aside for the purpose of allowing the suspended adjustment, amended as ordered in (1) and (2) above, to be made effective, and that upon the effectiveness thereof this proceeding be, and the same is hereby, considered as discontinued.

(4) That publication in accordance herewith may be made effective on ten (10) days' notice to the Commission and to the public.

(5) That all parties to the proceeding be furnished with a copy of this order by U.S. First Class Mail.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A

SCALE ADOPTED BY RESPONDENTS AS MAXIMUM ON COLUMN A (NOT REDRIED), UNMANUFACTURED TOBACCO (USED ONLY WHERE PRESENT RATES ARE LOWER)

MILES	RATE	MILES	RATE	MILES	RATE
0 - 40	20	126 - 130	38	216 - 220	55
41 - 45	21	131 - 135	39	221 - 225	56
46 - 50	22	136 - 140	40	226 - 230	57
51 - 55	23	141 - 145	41	231 - 235	58
56 - 60	24	146 - 150	42	236 - 240	58
61 - 65	25	151 - 155	43	241 - 245	59
66 - 70	26	156 - 160	44	246 - 250	60
71 - 75	27	161 - 165	45	251 - 260	61
76 - 80	28	166 - 170	46	261 - 270	62
81 - 85	29	171 - 175	47	271 - 280	63
86 - 90	30	176 - 180	48	281 - 290	64
91 - 95	31	181 - 185	49	291 - 300	65
96 - 100	32	186 - 190	50	301 - 310	66
101 - 105	33	191 - 195	51	311 - 320	67
106 - 110	34	196 - 200	52	321 - 330	68
111 - 115	35	201 - 205	53	331 - 340	69
116 - 120	36	206 - 210	54	341 - 350	70
121 - 125	37	211 - 215	54		

DOCKET NO. T-825, SUB 102

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed Increase)
in Rates on Meats and Shortening Group, Scheduled) ORDER
to Become Effective June 30, September 11 and)
October 5, 1967)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on October 10, 1967

BEFORE: Commissioners Thomas R. Eller, Jr., John W. McDevitt, presiding, and M. Alexander Biggs, Jr.

APPEARANCES:

For Respondents:

J. Ruffin Bailey and Clarence H. Noah
Bailey, Dixon and Wooten
Attorneys at Law
Raleigh, North Carolina

For Protestant:

Charles Woodson, Traffic Manager
C. F. Sauer Company
2000 West Broad Street
Richmond, Virginia

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: This investigation was instituted by the Commission on its own motion following the filing of tariff schedules hereinafter enumerated and described, which propose an increase in the rates applicable on commodities in the meats and shortening group, less-than-truckload, moving in common carriage by motor vehicle between points and places in the State in intrastate commerce.

The involved schedules are designated in Orders herein of June 27, August 15 and September 14, 1967, as follows:

Southern Motor Carriers Rate Conference, Agent: Tariff No. 137-G, Supplement No. 34 thereto, Item 21998-A thereof, filed May 29, and designated effective June 30, 1967.

North Carolina Motor Carriers Association, Inc., Agent: Tariff No. 10-D, NCUC No. 76, Supplement 79 thereto, Item

600245-B thereof, filed August 11, and designated effective September 11, 1967.

Motor Carriers Traffic Association, Inc., Agent: Tariff No. 3-E, NCUC No. 35, Supplement 49 thereto, Item 30070 thereof, filed September 1, and designated effective October 5, 1967.

The filings were originally suspended and their application deferred to and including October 27, 1967, and the initial filing was assigned for hearing on August 25, 1967. By subsequent orders the life of the suspension was extended to February 7, 1968, and hearing in this matter was postponed to October 10, 1967.

The hearing was held as scheduled and upon consideration of the evidence adduced at that time and the record in this proceeding as a whole, the Commission finds and concludes that the suspended tariff schedules should be allowed to become effective.

IT IS ACCORDINGLY ORDERED:

(1) That the orders of suspension and investigation herein be, and the same are hereby, vacated and set aside.

(2) That Respondents be, and they are hereby, authorized to cancel the suspension supplements to their respective tariffs.

(3) That where necessary the suspended matter be brought forward and incorporated in supplements to the current tariffs.

(4) That the publication authorized herein may be made effective on one (1) day's notice to the Commission but shall otherwise comply with the rules of the Commission governing the construction, posting and filing of tariffs.

(5) That this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. T-825, SUB 109

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed)
Increase in Rates Applicable on Asphalt,) RECOMMENDED
in Bulk, in Tank Trucks, Scheduled to) ORDER
Become Effective January 1, 1968)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on February 15, 1968

BEFORE: Chairman Harry T. Westcott, Presiding

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Protestants:

F. Kent Burns
Boyce, Lake and Burns
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina
For: Chevron Asphalt Company

For the Intervenor:

D. McReynolds
Attorney at Law
P. O. Box 420, Charlotte, North Carolina
For: Humble Oil and Refining Company

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WESTCOTT, HEARING COMMISSIONER: This investigation was instituted by the Commission following the filing, on statutory notice, by North Carolina Motor Carriers Association, Inc., Agent (NCMCA), of Supplement No. 9 to its Motor Freight Tariff No. 16-C, N.C.U.C. No. 69, which proposed to increase by ten (10) percent, effective January 1, 1968, the rates applicable on shipments of asphalt, in bulk, moving between points and places within the State in tank truckloads. The schedule was published by NCMCA for and on behalf of its member carriers having authority to engage in the transportation of asphalt, in bulk, in tank truckloads.

By order of December 19, 1967, the Commission suspended the proposed increase to and including September 26, 1968, instituted an investigation into and concerning the justness, reasonableness, and lawfulness thereof, and assigned the matter for hearing on March 6, 1968. The order made carriers proposing to participate in the suspended schedule respondents and placed upon them, under G.S. 62-75, the burden of proving that the proposed increase is just, reasonable and lawful.

Chevron Asphalt Company, 501 St. Paul Place, Baltimore, Maryland (Chevron), filed protest and petition for suspension that was not received in the offices of the Commission until December 21, 1967, subsequent to the issuance by this Commission of its Order of Suspension and Investigation.

By order dated January 15, 1968, Humble Oil and Refining Company, 1600 Woodlawn Avenue, Charlotte, North Carolina, was permitted to intervene and the hearing date was advanced from March 6 to February 15, 1968.

The protest of Chevron alleges that the proposed increase of ten (10) percent in the North Carolina intrastate rates, if allowed to become effective, will result in its competitors in adjoining states having a competitive advantage in the marketing of asphalt in certain areas of the State. Chevron has installations for the distribution of asphalt in Salisbury and Wilmington, North Carolina, and encounters competition from manufacturers and distributors of that commodity located in South Carolina and Virginia.

At the outset of the hearing a witness for respondents testified in regard to the basis for the present and proposed rates and the method observed in making publication. The testimony shows that specific rates are published to each county in the State from the ocean terminals at Wilmington and Morehead City and from Apex, Swannanoa, Hickory, Greensboro, River Terminal, Salisbury and Thrift, North Carolina. A distance scale of rates has general application. The rates are based on short highway distances from origin to county seat, using highways over which it is permissible to transport asphalt in tank truckloads. The witness testified that the rates applicable on asphalt from Charleston, South Carolina, to North Carolina destinations are in the process of being revised upward and presented an exhibit comparing the short highway distances and the present and proposed rates from Wilmington, North Carolina, to the eight (8) counties in the State hereinafter named, with like figures from Charleston, South Carolina, to the county seats of said counties. The distances from Wilmington exceed those from Charleston, except to Charlotte in Mecklenburg County. The short distances to that point from Wilmington and Charleston are 203 and 206 miles, respectively. At this point respondents sought and received permission to amend the filing here in issue to suggest the following changes in the suspended

rates from Wilmington, North Carolina, to destinations in the counties shown. Rates below and those referred to hereinafter are stated in cents per 100 pounds.

County	Suspended	Now Proposed
Catawba	40	39
Cleveland	40	36
Gaston	37	36
Henderson	44	40
Mecklenburg	*36	34
Polk	43	39
Rutherford	43	39
Watauga	44	43

*Suspended rate from Charlotte 34.

The witness testified that the purpose of respondents in amending the suspended filing was to continue asphalt shippers at Wilmington in a position to compete with producers shipping from Charleston, South Carolina. Under the amendment there will be no change in the present rates from Wilmington to destinations in the North Carolina counties of Cleveland, Henderson, Polk and Rutherford. This will result in an abatement of the entire increase of ten (10) percent (4 cents) originally proposed to those counties, an abatement of one (1) cent to Catawba, Gaston and Watauga Counties and two (2) cents to Mecklenburg County, with the exception of Charlotte. The overall result of the suspended filing, as amended, insofar as rates from Wilmington are concerned, would be no change in the present rates to four (4) counties, an increase of one (1) cent to nine (9) counties, two (2) cents to twenty-seven (27) counties, three (3) cents to thirty-seven (37) counties, and four (4) cents to destinations in nineteen (19) counties. The witness testified that the last upward revision in the North Carolina intrastate rates on asphalt was a general increase of ten (10) percent, which became effective April 1, 1960, under an order of this Commission in Docket No. T-825, Sub 35. The rates have not been increased since that time, although the truckload minimum weight was increased from 30,000 to 40,000 pounds effective February 5, 1967.

Respondents presented several additional witnesses that offered testimony dealing with the operating experiences of individual asphalt carriers. The testimony tends to show that the movement of asphalt is seasonal in character, generally moving from April to December, the moves are sporadic and equipment is often subject to delays occasioned by weather conditions. The return of equipment is a 100 percent empty movement. Respondents do not consider the transportation of asphalt to be compensatory on basis of the present rates.

The General Manager of A. C. Widenhouse, Inc. (Widenhouse), testified in regard to the operating

experiences of his company. The testimony of this witness tends to show that Widenhouse holds intrastate authority from this Commission authorizing the transportation of petroleum products, including gasoline, kerosene and fuel oils, as well as asphalt, in bulk, in tank truckloads, from all existing terminals to all points and places within the State. The carrier also holds limited interstate authority. The witness testified further that the preponderance of his company's petroleum traffic moves in short-haul service and is not subject to delays caused by inclement weather, as is the case in connection with the transportation of asphalt. The testimony tends to show that in some instances respondent has found it possible to transport as many as four (4) loads of petroleum products (gasoline, kerosene, fuel oils) in a day with one piece of equipment. Respondent believes that petroleum revenues are, in a measure, subsidizing asphalt operations. The witness explained the method observed in separating the revenues earned and the expenses incurred by his company (Widenhouse) in transporting asphalt in North Carolina intrastate commerce from its total revenues and expenses. Total revenues of $777,759.69 were earned in 1967 and total expenses of $718,277.34 were incurred. The resulting operating ratio is 92.4 percent. Revenue of $290,672.13 was estimated to have been earned in the transportation of clean products, leaving asphalt revenues of $487,087.56. The estimated asphalt revenues are 62.7 percent of the total. The witness testified that it required thirteen (13) pieces or 28.9 percent of the company equipment to handle the petroleum (clean product) movement and thirty-two (32) units or 71.1 percent of the equipment to handle the asphalt movement, or stated differently, that it required 71.1 percent of the equipment to earn 62.7 percent of the total revenue. The witness estimated the operating costs of his company for the performance of its asphalt service in the year 1967 as $510,695.19, representing 71.1 percent of the total expenses of $718,277.34 and since only $487,087.56 was earned in the transportation of asphalt the witness concluded that his company's asphalt operations were conducted at a substantial loss.

Several witnesses presented testimony tending to show that the operating costs of respondents have increased in all categories since the last increase in the asphalt rates made in April, 1960. A witness testified that the same model White tractor that could be purchased in 1960 for $11,000 now cost $16,000 and that the cost of a tandem axle tractor of the same make was now $16,000. Three different witnesses testified that the cost of performing the involved transportation service was very close to 36 or 37 cents per round-trip (loaded and empty) mile.

Mr. E. M. Cameron testified in regard to the handling of asphalt by Carolina Asphalt & Petroleum Company. The carrier, not a respondent herein, is a contract carrier of asphalt and a common carrier of heavy petroleum oils in North Carolina intrastate commerce. The witness testified

that the total revenue of his company for the year 1967 was $626,000 and of that amount $417,000 was earned in the transportation of asphalt. Mr. Cameron testified further that the cost to his company for transporting asphalt in 1967 exceeded earnings by seven-tenths of one percent, that he could not afford to purchase new equipment without an increase in rates and that his company could not provide the same kind of service it has in the past without acquiring some new equipment. This contract carrier through a tariff of minimum rates and charges on file with this Commission observes the motor common carrier rates in assessing charges on shipments of asphalt.

The position of Chevron Asphalt Company (Chevron) is one in opposition to any change in the present rates. This protestant believes that the carriers are entitled to compensatory revenue but contends that such additional revenues as they may now require should be obtained by the purchase and operation of modern lightweight aluminum equipment which would permit the transportation of maximum pay-loads. The testimony of the witness tends to show that Chevron opposes, in particular, any change in the rates from Wilmington, North Carolina, which, coupled with the revised rates that have been published from Charleston, South Carolina, and the existing rates from Richmond and Roanoke, Virginia, would result in reducing in any degree the rate advantage it now enjoys when shipping from Wilmington in competition with producers and distributors of asphalt shipping from Charleston, South Carolina, and points in Virginia. The witness presented an exhibit showing the present and suspended rates from Wilmington, North Carolina, in comparison with the present and revised rates from Charleston, South Carolina, that at the time of the hearing were scheduled to become effective March 1, 1968. An exhibit was also presented to show that the revised rates from Charleston, South Carolina, represented an average percentage increase of 6.65 percent.

Mr. Paul R. Gary, Manager, Highway Traffic, American Oil Company, with general offices in Chicago, Illinois, appeared without counsel and testified in his own behalf in opposition to the rates here under suspension.

The Commission's Staff presented several exhibits which tend to show that the last increase in the rates on asphalt between points in the State became effective April 1, 1960, and that the present minimum earnings of the carriers for the longer distances are low and for the medium distances appear marginal. An exhibit was also presented showing for the year 1966 the gross revenues and North Carolina revenues, expenses, and operating ratios of respondents herein, as extracted from the annual reports of the carriers on file in the Accounting Department of this Commission. The operating ratios after income taxes, except as noted, are as follows:

Associated Petroleum Carriers	100.3
Eastern Oil Transport, Inc.	95.5
Honeycutt, J. B., Co., Inc.	(2) 100.5
Maybelle Transport Company	97.3
(1) Petroleum Transit Co., Inc.	103.2
Petroleum Transportation, Inc.	96.5
Service Transportation Corp.	90.6
Southern Oil Transportation Co., Inc.	(2) 97.5
Terminal City Transport, Inc.	95.6
Widenhouse, A. C., Inc.	92.9

(1) - Now Schwerman Trucking Co., Milwaukee, Wisconsin.
(2) - Based on total company revenues and earnings before taxes.

Upon consideration of the pertinent records of the Commission, of which judicial notice has been taken, and the evidence adduced at the hearing, the Hearing Commissioner now makes the following

FINDINGS OF FACT

(1) That the original basis for the rates applying on asphalt, in tank truckloads, between points and places in North Carolina intrastate commerce, namely, a mileage scale applied to the short highway distances from origin to county seats, was prescribed by this Commission in its order in Docket Nos. T-825, Subs 2 and 3, dated December 7, 1955.

(2) That the present rates on asphalt (except from Wilmington to Charlotte) reflect the Commission prescribed basis, as set forth in (1) above, increased ten (10) percent, effective April 1, 1960, under authority of the Commission's order in Docket No. T-825, Sub 35, dated March 9, 1960.

(3) That the minimum weight attached to the rates on asphalt was increased from 30,000 to 40,000 pounds, or the calibrated capacity of the vehicle, whichever is the lesser, effective February 5, 1967.

(4) That the operating costs of transporting asphalt have increased substantially since April of 1960, and that the increase in revenues attributable to the comparatively recent increase in the truckload minimum weight has not been sufficient to entirely offset increased costs and that the carriers now have need for additional revenues in order to maintain them in a healthy condition and to provide an adequate and efficient service to the public.

(5) That the proposed departure from the Commission prescribed basis in adjusting rates from Wilmington to Mecklenburg County and destinations in certain counties in the Southwestern part of the State is a reasonable attempt on the part of respondents to allow the Wilmington producer to meet the competition of producers and distributors of asphalt shipping from Charleston, South Carolina, will do no

violence to the Commission prescribed basis and will not result in undue prejudice or unjust discrimination.

(6) That in a prior proceeding this Commission has found that asphalt should move at uniform rates by all motor vehicle carriers, including common and contract carriers.

(7) That the proposed (suspended) rates, as adjusted by respondents at the outset of this proceeding, will be just and reasonable and should be allowed to become effective and the same shall constitute rates for all carriers of asphalt, in bulk, in tank trucks, common and contract alike.

CONCLUSIONS

Section 146(g) of Chapter 62 provides that in any proceeding to determine the justness or reasonableness of any rate of any common carrier by motor vehicle, such rates shall be fixed and approved, subject to the provisions of Section 146(h) on the basis of operating ratios of such carriers, being the ratio of their operating expenses to operating revenues.

The operating ratios of respondents herein for the year 1966, as set forth in an exhibit presented by the Commission's Staff, range from a low of 90.6 to a high of 103.2 percent. The ratios of eight (8) of the ten (10) respondents exceed 95 percent. The operating ratio of Service Petroleum Corporation was 90.6 percent and of A. C. Widenhouse, Inc., 92.9 percent. The latter carrier, however, observed a formula for separating its asphalt revenues from its total intrastate revenues that tends to show that its asphalt transportation service for the year 1967 was a deficit operation. We have heretofore considered that rates and charges of motor vehicle carriers which produce an operating ratio above 95 fail to provide, in the public interest, an adequate and efficient transportation service. (T-825, Sub 50.) We conclude that the proposed increases are needed by respondent motor common carriers and that the same rates and charges should be observed by contract carriers of asphalt.

In consideration of the record in this proceeding and the foregoing Findings of Fact, we conclude that the proposed increase in rates, modified in the manner hereinbefore set forth, should be allowed to become effective.

IT IS THEREFORE ORDERED:

(1) That the suspended rates from Wilmington, North Carolina, to points in the counties of Catawba, Cleveland, Gaston, Henderson, Mecklenburg, Polk, Rutherford and Watauga be adjusted in the manner hereinbefore described and enumerated.

(2) That the Order of Suspension dated December 19, 1967, be, and the same is hereby, vacated, for the purpose of

allowing the suspended rates, adjusted as ordered in (1) above, to be made effective.

(3) That publication in accordance herewith may be made effective on one (1) day's notice to the Commission and to the public.

(4) That the proceeding be discontinued, and that upon the effectiveness of publication in compliance herewith the same is discontinued.

(5) That all parties to the proceeding be furnished with a copy of this order by U. S. First Class Mail.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-825, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed Increase in)
Motor Common Carrier Rates Applicable on Household) ORDER
Goods and Scheduled Effective April 21, 1968)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on September 24, 1968 at 10 A.M.

BEFORE: Commissioners Clawson L. Williams, Jr. (Presiding), John W. McDevitt, and H. Alexander Biggs, Jr.

APPEARANCES:

For the Respondents:

A. W. Flynn, Jr.
York, Boyd & Flynn
Attorneys at Law
P. O. Box 127, Greensboro, North Carolina

For the Protestants:

George A. Goodwyn
Assistant Attorney General
Room 124, State Library Building
Raleigh, North Carclina
For: The Using and Consuming Public
Burlington Industries, Inc.

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

Larry G. Ford
Commission Attorney
Raleigh, North Carolina

WILLIAMS, COMMISSIONER: On March 22, 1968, the North Carolina Household Goods Movers and Warehousemen Association, Francis L. Wyche, Agent, filed with the Commission a tariff schedule proposing an increase in the rates applicable for account of its member carriers on shipments of household goods moving in common carriage by motor vehicle in North Carolina intrastate commerce, scheduled to become effective April 21, 1968, and designated as Supplement No. 10 to North Carolina Household Goods Movers and Warehousemen's Association Tariff No. 1-D, N.C.U.C. No. 5, in full.

Upon consideration of the filing of the proposed tariff, the Commission issued an Order of Suspension and Investigation and Notice of Hearing, dated April 9, 1968, which Order deferred the effective date of said tariff to October 18, 1968, designated the carriers participating in the proposed tariff as Respondents and placed upon them the burden of proof of showing that the proposed increase was just, reasonable and otherwise lawful.

Thereafter the North Carolina Motor Carriers Association, Inc., Agent, filed with the Commission, Supplement No. 9 to its Tariff No. 18-A, N.C.U.C. No. 63, Items 140-E and 145 and Sections II and IIA thereof, which tariff proposes similar increases in rates as the tariff earlier filed by the North Carolina Household Goods Movers and Warehousemen, hereinbefore referred to, for and on account of certain of its carrier members. On May 31, 1968, the Commission entered a Supplemental Order of Suspension and Investigation and Notice of Hearing concerning the filing by the North Carolina Motor Carriers Association, Inc., which Order designated the carriers participating in that tariff as respondents, placed upon them the burden of proof of showing that said tariffs were just, reasonable and otherwise lawful, consolidated the two suspended filings for hearing, suspended the effective date of said filings to October 18, 1968, and continued the hearing set for June 20, 1968 by the Original Order of Suspension to July 24, 1968.

Thereafter by Order dated July 16, 1968, the Commission cancelled the hearing set for July 24, 1968 and reassigned the matter for hearing on September 24, 1968, at which time the matter was heard as shown in the caption.

On October 8, 1968, the Commission entered an Order extending the period of suspension from October 18, 1968 to December 17, 1968.

From the competent and material evidence and exhibits introduced into the record at the hearing, the Commission makes the following

FINDINGS OF FACT

1. The Respondent Motor Carriers are duly certificated common carriers of household goods by motor vehicles in North Carolina intrastate commerce.

2. By virtue of the Orders of Suspension and Investigation issued by the Commission under date of April 9, 1968 and May 31, 1968, and under the provisions of G.S. 62-75 and G.S. 62-134(c), the burden of proof is placed upon the Respondents to show that the proposed change and increase in rates is just and reasonable and otherwise lawful.

3. From the evidence adduced at the hearing by the Respondents, and the lack of evidence, the Commission finds as a fact that the Respondents have failed to bear the burden of proof and have failed to show to the Commission that the proposed rates are just and reasonable as required of them by the aforesaid Orders and General Statutes.

The Commission therefore reaches the following

CONCLUSIONS

Considering the entire record and the evidence presented therein the Commission is not convinced that the proposed rate increases are just and reasonable or needed by the Respondents to provide them with sufficient revenues to render the services for which they are certificated.

The evidence of record failed to take the question out of the realm of conjecture and speculation as to whether or not the proposed rates are just and reasonable. The record in this docket leaves the Commission with no alternative, in good conscience, except to deny the proposed rate changes.

IT IS, THEREFORE, ORDERED That the rate increases shown by proposed Supplement No. 10 to North Carolina Household Goods Movers and Warehousemen Association Tariff No. 1-D, N.C.U.C. No. 5, in full, and proposed Supplement No. 9 to Tariff No. 18-A, N.C.U.C. No. 63, Items 140-E and 145, and Sections II and IIA filed by the North Carolina Motor Carriers Association, Inc. are denied and their effectiveness disallowed.

IT IS FURTHER ORDERED That the Order of Suspension and Investigation of April 9, 1968 and the Supplemental Order of Suspension and Investigation dated May 31, 1968 are vacated

and the investigations thereunder discontinued and these matters dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This 8th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-825, SUB 115

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed)
Cancellation of Specific Commodity Rates) ORDER
Applicable on Glyceroids, in Truckloads,) VACATING
Scheduled Effective April 26, 1968) SUSPENSION

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on June 14, 1968

BEFORE: Commissioners M. Alexander Biggs, Jr., presiding, John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For Respondents:

James B. Wolfe, Jr.
Cannon, Wolfe, Coggin & Taylor
P. O. Box 2307 (108 Commerce Place)
Greensboro, North Carolina
For: Chemical Leaman Tank Lines, Inc.

For the Protestants:

John R. Jordan, Jr.
Jordan, Morris & Hoke
Attorneys at Law
First Citizens Bank Building
Raleigh, North Carolina
For: Carolina By-Products Company, Inc.
Carolina & Southern Processing Corporation

Henry H. Isaacson
Stern, Randleman & Isaacson
Attorneys at Law
1402 Wachovia Building (P. O. Box 3112)
Greensboro, North Carolina
For: Carolina & Southern Processing Corporation
Carolina By-Products Company, Inc.

For the Commission's Staff:

Edward B. Hipp, Attorney,
North Carolina Utilities Commission
Raleigh, North Carolina

BIGGS, COMMISSIONER: On March 26, 1968, Supplement No. 3 to North Carolina Motor Carriers Bulk Commodity Tariff 21-B, N.C.U.C. No. 83, was filed with the North Carolina Utilities Commission to become effective on April 26, 1968. Protest and motion to suspend and investigate said publication insofar as it proposed to cancel the specific commodity rates published for application on shipments of glyceroids moving from Gastonia and Greensboro, N. C., to points and places in the State, in truckloads, was filed on April 10, 1968, by counsel for Carolina & Southern Processing Corporation, of Gaston County, North Carolina, and Carolina By-Products Company, Inc., of Greensboro, North Carolina. By order dated April 17, 1968, the Commission suspended the proposed cancellation of rates on glyceroids in Items 2940 through 3050 of the involved tariff supplement to and including October 23, 1968, and instituted an investigation into and concerning the reasonableness of the proposed cancellation. A hearing in the matter was set for June 12, 1968. The order suspending said publication instituting investigation and setting the matter for hearing named all the carriers participating in the present rates on glyceroids respondents and placed upon said carriers the burden of proving that the involved publication is just, reasonable and otherwise lawful.

In response to motion filed by counsel for the protestants, the matter was assigned for prehearing conference on June 7, 1968, which conference was held as scheduled. The hearing was continued by consent of the parties to June 14, 1968, at which time the matter was heard and evidence was presented by both the proponents of the publication and by the protestants thereof.

FINDINGS OF FACT

Based upon the evidence adduced at said hearing, the Commission makes the following findings of fact:

1. Chemical Leaman Tank Lines, Inc., operating under a lease of the intrastate authority of Ryder Truck Lines, is a motor carrier duly certificated by this Commission and therefore is properly before the Commission and subject to its jurisdiction.

2. Supplement No. 3 to North Carolina Motor Carriers Association, Inc., Agent, Tariff 21-B, N.C.U.C. No. 83, Item Nos. 2940 through 3050 thereof, was filed with this Commission on March 26, 1968, to become effective on April 26, 1968, unless suspended by the Commission in accordance with the provisions of law. Said tariff supplement provided for the cancellation of specific commodity rates covering

shipments of glyceroids moving from Gastonia and Greensboro, North Carolina, in truckloads, to various points and places within the State of North Carolina in intrastate commerce.

3. Glyceroid is animal fat, sometimes called tallow. It is transported as a liquid in tank vehicles, although it must be heated to a higher-than-normal temperature in order to be kept liquid.

4. Chemical Leaman Tank Lines, Inc., operating under the authority of Ryder Truck Lines, Inc., is one of the motor carriers having authority to transport shipments of glyceroids, in truckloads, between points and places within the State of North Carolina and is the principal carrier participating in the transportation of glyceroids from Gastonia and Greensboro on the basis of the rates the proposed cancellation of which is here in issue.

5. The point to point rates sought to be canceled under the publication in question are less than the scale rates published in other sections of Bulk Commodity Tariff No. 2|-B; and the effect of said publication, if allowed to go into effect, is to remove the special rates specified for some glyceroid shipments and to make all of such shipments subject to rates otherwise applicable under said Bulk Commodity Tariff No. 2|-B.

6. Glyceroid shipments are not offered to Chemical Leaman Tank Lines, Inc., on such regular basis as to justify the dedication of tank equipment by such carrier to such use, and said carrier is required to surgically clean its tanks after each shipment in order to have such equipment available for the transportation of other liquid commodities. Most of the glyceroid shipments are short haul movements and involve costs of operation per mile that are substantially greater than the costs involved in hauls for longer distances.

7. The revenue per mile received by Chemical Leaman Tank Lines, Inc., from the transportation of glyceroids under the existing tariff is substantially less than the expense per mile incurred by said carrier in providing said transportation.

8. The handling of glyceroid shipments by Chemical Leaman Tank Lines, Inc., under present rates, has resulted in financial loss and is burdensome upon the other rate structure of said carrier.

9. The total shipments of glyceroids handled by Chemical Leaman Tank Lines, Inc., under the tariff in question is a very small part of its total intrastate operations, and the effect of any increased revenues derived by it from the cancellation of the point to point rates in question would reflect in said carrier's operating ratio only in terms of a fraction of one per cent. The operating ratio of said carrier, as reflected in the annual report filed by it with

the Commission, is now at such level that any small decrease in said ratio that might result from an increase in rates on the glyceroid shipments in question would not be sufficient to make said carrier's operating ratio unreasonable or to require an adjustment in its other rates.

CONCLUSIONS

In consideration of the record in this proceeding and the foregoing Findings of Fact, we conclude that the proposed cancellation of the specific point to point rates on glyceroids from Gastonia (Crowders) and Greensboro, North Carolina, to points and places within the State, is not unjust, unreasonable or otherwise unlawful and that said cancellation should be allowed to become effective.

IT IS THEREFORE ORDERED:

(1) That the Order of Suspension dated April 17, 1968, be, and the same is hereby, vacated and set aside for the purpose of allowing the suspended cancellation of rates on glyceroids to become effective.

(2) That pursuant to G.S. 62-79(b) the rates that will become effective on shipments of glyceroids from Gastonia (Crowders) and Greensboro, North Carolina, with the cancellation of the suspension supplement as authorized in (1) above may not be changed or altered within the period of time specified by the statute without relief from the provisions of this order first having been obtained.

(3) That publication in accordance herewith may be made effective on ten (10) days' notice to the Commission and the public.

(4) That all parties to the proceeding be furnished with a copy of this order by U. S. First Class Mail.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 116

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed Increase)
in Rates on Salt, Dry, in Bulk, in Dump and Hopper) ORDER
Vehicles, Scheduled Effective April 26, 1968)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on June 13, 1968

BEFORE: Chairman Harry T. Westcott, Commissioners, Clawson L. Williams, Jr., (Presiding) and Thomas R. Eller, Jr.

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
Bailey, Dixon and Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Bulk Haulers, Inc.

For the Commission Staff:

Edward B. Hipp
Commission Attorney

WILLIAMS, COMMISSIONER: This investigation was instituted by the Commission following the filing, on statutory notice, by North Carolina Motor Carriers Association, Inc., Agent, of Supplement No. 3 to its Motor Freight Tariff 21-B, N.C.U.C. No. 83, which by Item 4260-A published therein, proposed the cancellation of a scale of rates published for application on truckload shipments of salt, in bulk, when moving from Wilmington, North Carolina, to points and places within the State in North Carolina intrastate commerce in dump and hopper type vehicles, effective April 26, 1968, and provided in lieu thereof for application of the same scale of rates on such traffic as is now applicable on like shipments of bulk salt when transported in pneumatic type vehicles. The present rates on shipments in dump and hopper type equipment are applicable only from Wilmington, North Carolina, and are subject to a minimum truckload weight of 36,000 pounds. The proposed and higher rates have general application throughout the State and are subject to a minimum of 40,000 pounds.

Watkins Salt Company, Watkins Glen, New York, (Watkins) in letter received in the offices of the Commission on April 8, 1968, (treated as a petition) sought suspension of the involved tariff filing for and on behalf of its wholly owned subsidiary, Carolina Salt Company, P. O. Box 26, Wilmington, North Carolina, on the grounds that the proposed increase in both the minimum weight and the rates is unrealistic and will nullify the geographical advantage it has enjoyed in shipping from Wilmington to destinations within 200 miles.

By order of April 17, 1968, the Commission suspended the involved publication to and including October 23, 1968, instituted an investigation into and concerning the justness, reasonableness and lawfulness thereof and assigned the matter for hearing on June 13, 1968. The order made

carriers participating in the suspended schedule respondents and placed upon them under G.S. 62-75 and 62-134 the burden of proving that said schedules are just and reasonable.

Upon call of the proceeding for hearing it developed that neither Watkins Salt Company nor its subsidiary, Carolina Salt Company, were present or represented by counsel, and upon motion by counsel for respondent, Bulk Haulers, Inc., the complaint filed by Watkins was dismissed.

Bulk Haulers, Inc., a respondent herein that has participated actively in the handling of bulk salt from Wilmington presented a witness that offered testimony dealing with the operating experiences of his company in the handling of the traffic. The witness testified that the scale of rates the carriers now propose to cancel was established in the latter part of 1963 and that prior to that time the carriers had not had any experience in the transportation of bulk salt in dump and hopper type equipment. The witness further testified that salt causes corrosion and an unusually rapid deterioration of equipment and that payloaders used in loading tend to hit and cause pitting of trailers and also damages tarpaulins used in covering the load. Salt sifts onto the chassis of equipment and gets in between the brake linings and drums and tends to clog the industrial engine used to raise and lower the dump body. The witness also stated that maintenance costs were unusually high as it is necessary to thoroughly clean equipment following each trip by washing off all free salt and dust and then spraying all surfaces with a light diesel oil. The witness also testified that his company has experienced a loss in transporting salt in dump type equipment although the average payload is about 44,000 pounds and that losses have recently increased due to the hauls from Wilmington becoming progressively shorter being principally to points east of Raleigh resulting in an average haul of less than 150 miles. Bulk Haulers transports most of the bulk salt originating at Wilmington and it is unable to continue the service on basis of the present rates. The carriers cost per running mile (loaded and empty) for the transportation of all traffic during the year 1967 was 36.7 cents. The witness also testified that the revenue received by his company for the transportation of bulk salt for the same period averaged 34.9 cents per mile and that through the first four months of 1968 its average earnings on salt traffic was 30.6 cents per round-trip miles.

The Commission Staff presented several exhibits that tend to show that the present rates on salt, in bulk, in dump or hopper type vehicles from Wilmington, now continued in effect under order of suspension herein dated April 17, 1968, are lower than rates published for account of other motor common carrier transporters of bulk salt between points and places within the State and that, for the most part, the proposed rates here in issue are also lower than the present rates published for account of certain other

carriers for application on like traffic transported under similar circumstances and conditions.

The Commission Staff also offered in evidence an exhibit that compared the present and proposed rates and the minimum earnings thereunder per minimum truck load and per loaded truck mile. The minimum earnings under the present rates and minimum of 36,000 pounds for distances from 50 through 300 miles average 50 cents per loaded mile and minimum earnings for the same distances under the proposed rates and minimum of 40,000 pounds average 74.4 cents per loaded mile. The return of equipment being a 100 per cent empty movement, the earnings per round-trip mile would be exactly one-half of the loaded mile earnings.

The witness for Bulk Haulers testified that the loading of salt out of Wilmington by his company averaged 44,000 pounds. The earnings per truck load and per round-trip truck mile using that average load figure and the present and proposed rates for representative distances results in the following:

	PRESENT			PROPOSED		
Miles	Rate	Truckload (Dollars)	Per Round-Trip Mile (Cents)	Rate	Truckload (Dollars)	Per Round-Trip Mile (Cents)
30	6	26.40	40.2	10	44.00	73.3
50	7	30.80	30.8	12	52.80	52.8
75	11.2	49.28	32.9	16	70.40	46.9
100	14.	61.60	30.8	18	79.20	39.6
125	18.1	79.64	31.9	24	105.60	42.2
150	20.9	91.96	30.7	27	118.80	39.6
175	25.1	110.44	31.5	32	140.80	40.2
200	27.9	122.76	30.7	36	158.40	39.6

Upon consideration of the pertinent records of the Commission of which judicial notice has been taken, and the evidence adduced at the hearing, we now make the following

FINDINGS OF FACT

1. Respondent motor common carriers participating in the tariff schedule sought to be cancelled, applying on shipments of bulk salt moving in dump and hopper type equipment between points and places within the State and proposing to participate in the scale of rates sought to be made effective for application on said traffic are subject to the jurisdiction of, and regulation by, this Commission.

2. That the scale of rates now applicable on shipments of bulk salt moving from Wilmington, North Carolina, to points and places within the State in dump and hopper type equipment was originally published effective December 14, 1963, and that prior to that time respondent carriers had not had any experience in transporting the commodity in dump and hopper type vehicles. The original rates have not been

increased and the costs of performing a transportation service have increased since the rates were established.

3. That the scale of rates proposed for application on shipments of bulk salt when transported in dump and hopper type equipment is the same as now applicable on shipments moving in pneumatic type equipment.

4. That the expense of maintaining dump and hopper type equipment when utilized in transporting shipments of bulk salt is unusually high due to the corrosive effect of the commodity and the damage to equipment and canvas covers caused by the use of payloaders in loading.

5. That the present rates applicable on shipments of bulk salt, in dump or hopper type equipment do not reflect a level high enough to produce adequate revenues and that respondents should be allowed to make effective the suspended scale of rates and charges in order that transportation of the traffic may be on a compensatory basis and the carriers enabled to preserve and continue the motor carrier transportation of bulk solar salt in dump and hopper type equipment as now afforded to those engaged in the marketing and distribution of the commodity which is used principally for ice control purposes on highways of the State.

CONCLUSIONS

In consideration of the record in this proceeding and the foregoing Findings of Fact, we conclude that the present adjustment applicable on bulk shipments of salt in pneumatic type equipment represents a reasonable basis for assessing rates on that commodity when moving in dump and hopper type vehicles and that the publication under suspension in this proceeding should be approved.

IT IS, THEREFORE, ORDERED:

1. That the Order of Suspension dated April 17, 1968, be, and the same is hereby, vacated and set aside for the purpose of allowing the present rates and charges on bulk salt in pneumatic type equipment to become applicable on like shipments of salt when transported in dump and hopper type vehicles.

2. That publication authorized hereby may be made on one (1) day's notice to the Commission and the public.

3. That this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of July, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-825, SUB 117

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed Revised Motor Carrier Rules and Charges Governing Reconsignment, Diversion or Reshipment, Scheduled to Become Effective June 5, 1968) ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on June 28, 1968

BEFORE: Chairman Harry T. Westcott, Commissioners, Thomas R. Eller, Jr. (Presiding), John W. McDevitt, and M. Alexander Biggs, Jr.

APPEARANCES:

For the Respondents:

Keith Y. Sharpe
Attorney at Law
P. O. Box 615
Winston-Salem, North Carolina 27102

For the Protestants:

Hugh Cannon
Sanford, Cannon, Adams & McCullough
1500 Branch Bank & Trust Building
Raleigh, North Carolina 27602

Paul P. Watkins
Attorney at Law
740 National Bank of Georgia Building
Atlanta, Georgia 30303
For: The North Carolina Traffic League, Inc.
Piedmont Freight Bureau, Inc.
Textile Fibers and By-Products Association

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

ELLER, COMMISSIONER: This investigation began with the filing of supplements to applicable Class and Commodity Tariffs containing proposed rules and charges to govern the reconsignment, diversion or reshipment of less-than-

truckload and any quantity shipments moving in North Carolina intrastate commerce and scheduled to become effective June 5, 1968.

Being of the opinion that the filing was one affecting the public interest, the Commission suspended the effectiveness of the tariffs and scheduled investigation and hearing thereon.

Specifically, the suspended tariffs under investigation are:

Motor Carriers Traffic Association, Inc., Agent, Motor Freight Tariff No. 3-F, N.C.U.C. No. 38: Supplement No. 21 thereto, Items 10009 and 10020A thereof,

North Carolina Motor Carriers Association, Inc., Agent, Motor Freight Tariff No. 10-D, N.C.U.C. No. 76; Supplement 97 thereto, Item 20500-B thereof,

Southern Motor Carriers Rate Conference, Agent, Motor Freight Tariff No. 137-H, N.C.U.C. No. 37: Supplement 21 thereto, Items 20800-A and 20990 thereof.

The order made the participating carriers respondents and placed upon them the burden of proof pursuant to G.S. 62-75 and G.S. 62-134.

Protests were received and parties and counsel were present at the hearing as captioned.

The tariffs under investigation define the services and provide rules and charges covering the interception and reshipping of shipments in transit, relinquishment of shipments to consignor or another carrier at point of origin, and reconsignment or diversion at origin or at destination. Respondents presented testimony and exhibits in support of the suspended rules and charges, contending they are necessary to enable them to legally perform certain accessorial services required by the shipping public and now being rendered by carriers.

The preponderance of respondents' evidence is in justification of the rules and charges as they relate to so-called "hidden shipments", this term being defined as relating to those shipments released to the carrier on request of a third party under release slips or shipping tags as distinguished from a shipping order or bill of lading so that the receiving carrier does not know the ultimate destination of the shipment nor the identity of the consignee. The evidence tends to show that the handling of such shipments involves additional and substantial carrier costs not incurred in the handling of ordinary traffic. The evidence further discloses that manufactured textile products are practically the only commodities subject to the so-called "hidden shipment" procedure.

Protestants presented evidence tending to show that textile waste materials are not offered for transportation under the "hidden shipment" procedure and, therefore, contend no such rules should be applicable to these commodities.

Subsequent to the hearing the Commission on petition of respondents permitted withdrawal of the provisions of the "hidden shipment" rule (Subparagraph (a)(2) of Paragraph 2) from the publications under investigation.

Also under investigation is a rule covering relinquishment of shipments at origin. This rule provides a charge of 25 cents per 100 pounds (minimum of $3.00) where shipments are relinquished to the originating carrier at its terminal. Where the shipment is returned to the original place of pickup or delivered to another carrier's terminal the proposed charge is 50 cents per 100 pounds, subject to the aforesaid minimum $3.00. Both charges are identical to those already in effect in interstate commerce.

The Commission staff offered evidence tending to show the present charge for redelivery of shipments is 15 cents per 100 pounds and that the minimum line haul charge for transportation of a single shipment in North Carolina intrastate commerce is $2.75. The staff evidence contrasts these charges with the proposed higher charges for mere relinquishment at the original carrier's terminal, or delivery to another carrier's terminal, or return to the place of pick-up.

FINDINGS AND CONCLUSIONS

1. The participating carriers, and the rules and charges proposed herein, are properly before the Commission, which has jurisdiction over the parties and the subject matter.

2. Respondents have borne the burden of proof and have established that some additional costs and some extra service are involved in the relinquishment of shipments at the originating carrier's terminal, at another carrier's terminal, or return to the point of pick-up.

3. Respondents have not borne the burden of proof and have not established that the relinquishment and return of shipments as aforesaid results in greater costs to them, or involves rendition of greater service, than does the redelivery of shipments in line haul service and line haul minimums.

4. It would be fair, just, and reasonable, both to the participating carriers and to the shipping public, to allow a charge on relinquishment of shipments at origin not greater than the redelivery charge and subject to no greater minimum than applicable on line haul service, i.e., 15 cents per 100 pounds, subject to a minimum charge of $2.75.

Accordingly, IT IS ORDERED:

1. That the tariffs designated in the premises, as amended by the deletion of the "hidden shipment" rule (Subparagraph (a)(2) of Paragraph 2) be, and the same hereby are approved and allowed to become effective as hereinafter provided except that all charges therein contained which are in excess of 15 cents per 100 pounds and are subject to a minimum greater than $2.75 on relinquishment and return of shipments at origin are disallowed and disapproved.

2. Respondents are authorized to file with this Commission on one (1) day's notice an amendment to the suspended tariffs providing for a charge of 15 cents per 100 pounds, subject to a minimum of $2.75, on shipments relinquished or returned at origin in accordance with the premises.

3. Upon the filing of the amendments as provided herein, the order of suspension issued in this docket on May 21, 1968, shall be deemed vacated without further order of the Commission and the tariffs as so amended shall become effective on one (1) day's notice.

4. Respondents are allowed thirty (30) days from the date this order issues in which to file the tariff amendments herein approved and authorized and shall not make any of the tariffs under investigation effective until said amendments have been duly filed.

5. Upon the conditions herein set forth, the investigation in this docket is hereby discontinued and these proceedings terminated.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. T-1012, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Sale and Transfer of a Portion of the Authority) ORDER
Contained in Common Carrier Certificate No. C-541)
from Parnell Transfer, Inc., Parkton, North Carolina)
to Barnett Truck Lines, Inc., 3404 Wheat Street,)
Kinston, North Carolina)

HEARD IN: The Commission Hearing Room, Old YMCA Building, Raleigh, North Carolina, on April 9, 1968, at 10 A.M.

BEFORE: Commissioners Clawson L. Williams, Jr. (Presiding), M. Alexander Biggs, Jr. and Thomas R. Eller, Jr.

APPEARANCES:

For the Applicants:

Sam O. Worthington
Attorney at Law
P. O. Box 598, Greenville, North Carolina

For the Protestants:

Kenneth Wooten, Jr. and J. Ruffin Bailey
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Burton Lines, Inc.
Forbes Transfer Company, Inc.
Vance Trucking Company, Incorporated
Epes Transport System
Cargocare Transportation Company, Inc.
North State Motor Lines, Inc.

WILLIAMS, COMMISSIONER: By a joint application filed with the Commission on February 19, 1968, Parnell Transfer, Inc., a corporation, as Transferor, and Barnett Truck Lines, Inc., a corporation, as Transferee, seek approval of the transfer from said Transferor to said Transferee of a portion of the authority contained in Certificate No. C-541, more particularly described as follows:

"Transportation of leaf tobacco in hogsheads, baskets, sheets and other containers; also cooperage stock, and empty tobacco containers, over irregular routes, in the State of North Carolina, between all points and places where said commodities are transported. Being a portion of the operating authority contained in (5) of Common Carrier Certificate No. C-541 issued to Parnell Transfer, Inc."

Notice of application, with a description of the rights involved in the proposed transfer, along with the time and place of the hearing, was published in the March 1, 1968 issue of the Commission's Calendar of Hearings with the provision that if no protests were filed by 5 p.m., Thursday, April 4, 1968, the case would be decided on the basis of the application, the documentary evidence attached thereto, and the records of the Commission pertaining thereto, and no hearing would be held.

A joint protest was filed within apt time by Burton Lines, Inc., Forbes Transfer Company, Inc., Vance Trucking Company, Incorporated, Epes Transport System, Cargocare Transportation Company, Inc. and North State Motor Lines,

Inc., all of which were represented by counsel at the hearing.

In support of the application, applicants offered oral and documentary evidence which tends to show that Transferor is the owner and holder of Certificate No. C-54| issued by the North Carolina Utilities Commission having purchased the authority contained therein in |955 and has conducted operations under said rights; that there are no debts or claims against Transferor of the nature described in G.S. 62-|||; that there is a public need for the transportation operations sought to be transferred; that Transferee has the experience, financial ability, and is otherwise qualified to assume ownership of the portion of Certificate No. C-54|, heretofore described, and perform the transportation service authorized and required therein. Applicants also offered certain exhibits, which were received in evidence, including Sales Agreement entered into between the parties, under the terms of which Transferee agrees to pay the sum of $4,000.00 for said operating authority, $250.00 being paid simultaneously with the signing of said Agreement and the balance payable within thirty days from the date of approval of such transfer by the North Carolina Utilities Commission.

Protestants sought to show that the authority which is the subject of the application has not been operated and is dormant, and that the transfer of the same would create a new authority to transport leaf tobacco and would deprive the protestants of business which they are authorized to handle.

Based upon the application, the documentary evidence attached thereto and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

|. Applicant, Parnell Transfer, Inc., is a duly organized North Carolina corporation with principal offices in Parkton, North Carolina. It owns and holds Common Carrier Certificate No. C-54| issued by the North Carolina Utilities Commission, which authority contains, inter alia, the authority sought to be transferred herein, to-wit:

"(5) Transportation of leaf tobacco in hogsheads, baskets, sheets and other containers; also cooperage stock and empty tobacco containers; cotton in bales and peanuts, over irregular routes, in the State of North Carolina between all points and places where said commodities are transported."

2. That Robert Earl Parnell of Parkton, North Carolina, is the owner of all, or substantially all, of the capital stock of applicant, and is engaged in the trucking and farming business.

3. That applicant, Parnell Transfer, Inc., obtained the authority sought to be transferred about 1955; that shortly after acquiring said authority Parnell unsuccessfully solicited tobacco for hauling and thereafter discontinued solicitation and leased its vehicles to other carriers having authority to transport tobacco. That Parnell made application to this Commission in 1965 in Docket No. T-133 whereby it sought authority to transfer the authority herein involved to Oliver Trucking Company; that said application for transfer in said Docket T-133 was denied on the ground that Parnell had not exercised said authority and it had become dormant. There was no showing in that docket of evidence of public need for reestablishment of authority or showing that the transfer was justified by the public convenience and necessity as required under G.S. 62-111.

4. That at all times since the entry of the Order in Docket T-133 on the 27th day of August, 1965, Parnell has actively solicited tobacco for hauling and did in fact obtain business and haul tobacco beginning in October of 1967 and has actively engaged in the transportation of tobacco since October, 1967 through January of 1968; that Parnell used under lease the equipment of the Applicant Transferee, Barnett Truck Lines, Inc., during said period of time for the transportation interstate and intrastate of tobacco, Parnell's equipment being engaged during said time in the hauling of other commodities pursuant to other portions of the authority contained in Certificate No. C-541. However, Parnell has at all times since obtaining this authority owned and maintained equipment suitable for the transportation of tobacco.

5. That there are no debts, claims, nor taxes due by the Applicant Parnell of the nature set forth in G.S. 62-111.

6. That Applicant Transferee, Barnett Truck Lines, Inc., has the experience, the financial ability, the rolling equipment, and is otherwise qualified to acquire and exercise the authority to be transferred and to meet such reasonable demands as the business may require and to furnish adequate service on a continuing basis.

7. That the purchase price Applicant Transferee has agreed to pay Applicant Transferor for said authority sought to be transferred is $4,000.00 in cash subject to approval by the North Carolina Utilities Commission.

8. That the transfer of the operating authority described herein will not be inconsistent with the public interest, is justified by the public convenience and necessity, and is needed by the shipping public.

9. That the Applicants have borne the burden of proof required by law and the proposed sale and transfer should be approved.

CONCLUSIONS

Protestants contend that the authority sought to be transferred has not been exercised and is dormant and has in fact, by virtue of the Order entered in August, 1965 in Docket T-133, been cancelled. We do not interpret the Order entered in Docket T-133 as cancellation of the authority herein involved. We admit that the Commission is bound by the Findings of Fact in Docket T-133. The Findings of Fact in this case do not conflict with the Findings in that docket.

Apparently, the Commission had the authority under G.S. 62-112(b) upon complaint or upon the Commission's own initiative to cancel the authority sought to be transferred at any time after the entry of the Order in Docket T-133 on the grounds of dormancy. However, action was never taken by the Commission, by the Protestants, nor by any other party to have the authority cancelled. Furthermore, prior to the enactment of G.S. 62-112(c) by the 1967 Legislature, effective January 1, 1968, the Commission had no authority to cancel such franchise as herein involved upon a finding of dormancy in a proceeding to sell or transfer said franchise. That section did not become the law until after Applicant Parnell had begun to exercise the authority in October, 1967 and after it had ceased to be dormant. It would seem to us that Protestants have slept upon their rights to have this authority cancelled under the provisions of G.S. 62-112 while it was in a state of dormancy.

Protestants further contend that the transfer herein sought is not justified by the public convenience and necessity as required by G.S. 62-111. In the Order in Docket No. T-133, page 7, the Commission stated: "G.S. 62-111, enacted in 1963, provides that the Commission shall approve transfers of the type here sought 'if justified by the public convenience and necessity.' As we understand this statute, where there has been little or no operation of the authority sought to be transferred and approval of the acquisition transaction will result in a re-institution or revival of the service, there must be evidence of a need for the service before our approval is justified."

The application in Docket T-133 was not supported by any evidence of public need for reestablishment of the service sought to be transferred in that case. This is not so in the present case. Applicants offered evidence at the hearing of two tobacco company executives of the use and need of this service in and around Kinston, North Carolina by their respective companies. They testified to the effect that they had used applicant's service during the 1967 tobacco season; that it was very satisfactory; that they had a need for it; that there had been times when other tobacco transportation service had not been available and that Parnell was able to meet their needs and get trucks to them when others could not. We consider this evidence quite

sufficient to show that this transfer is justified by the public convenience and necessity.

IT IS, THEREFORE, ORDERED:

1. That the application in this docket be and it is hereby approved and the Applicant, Parnell Transfer, Inc. is hereby permitted to sell that portion of the authority contained in Common Carrier Certificate No. C-541, as set out on Exhibit B hereto attached, to Barnett Truck Lines, Inc. and Barnett Truck Lines, Inc. is hereby authorized to purchase and to operate this authority under that portion of said certificate.

2. The Applicant, Barnett Truck Lines, Inc., is hereby granted 30 days from the date of this Order to complete his transaction with Applicant, Parnell Transfer, Inc., to file with this Commission his list of equipment, schedule of minimum rates, evidence of financial security for the protection of the traveling and shipping public and otherwise comply with all rules and regulations of this Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1012, SUB 3

Barnett Truck Lines, Inc.
3404 Wheat Street
Kinston, North Carolina 2850l

Irregular Route Common Carrier Authority

EXHIBIT B*

"(5) Transportation of leaf tobacco in hogsheads, baskets, sheets and other containers; also cooperage stock, and empty tobacco containers, over irregular routes, in the State of North Carolina between all points and places where said commodities are transported."

*Corrected by Order Dated 5-22-68.

DOCKET NO. T-1441

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application for Sale and Transfer of Certificate No. C-256 from Lowther Trucking Company, 1425 North Tryon Street, Charlotte, North Carolina to Carolina Trucking Company, Inc., 1425 North Tryon Street, Charlotte, North Carolina) ORDER

HEARD IN: The Commission Hearing Room, Library Building, Raleigh, North Carolina, on December 5, 1968, at 10 A.M.

BEFORE: Commissioners Clawson L. Williams, Jr., (Presiding), Thomas R. Eller, Jr. and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicants:

Emil F. Kratt
Hasty & Kratt
Attorneys at Law
725 Law Building
Charlotte, North Carolina

For the Protestants:

J. Melville Broughton, Jr.
Broughton & Broughton
Attorneys at Law
P. O. Box 2715, Raleigh, North Carolina 27602
For: Custom Transport, Inc.

WILLIAMS, COMMISSIONER: By a joint application filed with the Commission on October 15, 1968, Lowther Trucking Company, Inc., a corporation, as Transferor, and Carolina Trucking Company, Inc., a corporation, as Transferee, seek approval of the transfer from said Transferor to said Transferee of the authority contained in Certificate No. C-256, as shown in Exhibit B hereto attached.

Notice of application, with a description of the rights involved in the proposed transfer, along with the time and place of the hearing, was published in the November 6, 1968 issue of the Commission's Calendar of Hearings with the provision that if no protests were filed by 5 p.m., Friday, November 29, 1968, the case would be decided on the basis of the application, the documentary evidence attached thereto, and the records of the Commission pertaining thereto, and no hearing would be held.

A protest was filed within apt time by Custom Transport, Inc. and said protestant was represented by counsel at the hearing.

In support of the application, applicants offered oral and documentary evidence which tends to show that Transferor is the owner and holder of Certificate No. C-256 issued by the North Carolina Utilities Commission and has conducted operations under said rights; that there are no debts or claims against Transferor of the nature described in G.S. 62-111; that Transferee has the experience, financial ability, and is otherwise qualified to assume ownership of Certificate No. C-256, heretofore described, and perform the

transportation service authorized and required therein. Applicants also offered certain exhibits, which were received in evidence, including Sales Agreement entered into between the parties, under the terms of which Transferee agrees to pay the sum of $60,000.00 with interest at 6% for said operating authority, payable in successive weekly installments of $135.11 each, beginning on Friday, January 3, 1969, and on each succeeding Friday thereafter until the entire outstanding balance of principal and interest is paid in full.

Protestant sought to show that the portion of the authority sought to be transferred involving "transportation of cotton in bales, linters, motes, bagging, burlap, bale covering, textile sweepings and waste between all points and places within the State of North Carolina" and "transportation of cotton in bales from and to points and places on and east of U.S. Highway 25 in North Carolina" has not been operated and is dormant, and that the transfer of same would create a new authority to transport said products and would deprive the protestants of business which they are authorized to handle.

Based upon the application, the documentary evidence attached thereto and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Applicant, Lowther Trucking Company, is a corporation duly organized and existing under the laws of the State of North Carolina and owns and holds Common Carrier Certificate No. C-256, issued by the North Carolina Utilities Commission, which certificate contains the authority shown on Exhibit B hereto attached and which the applicants herein seek to transfer. Applicant, Carolina Trucking Company, Inc., is a corporation duly organized and existing under the laws of the State of North Carolina and seeks to acquire said certificate and the operating authority contained therein. That J. Wesley Lowther is the principal stockholder and Chief Executive of both Lowther Trucking Company and Carolina Trucking Company, Inc. The said J. Wesley Lowther desires to transfer and sell Lowther Trucking Company as a going corporation together with the interstate operating authority held by Lowther Trucking Company. However, the proposed purchaser of Lowther Trucking Company does not desire to operate the intrastate operating authority represented by Certificate No. C-256 and the said J. Wesley Lowther caused Carolina Trucking Company, Inc. to be created and chartered for the purpose of acquiring and operating the intrastate rights of Lowther Trucking Company.

2. The said J. Wesley Lowther has had 36 years experience in the operation of Lowther Trucking Company in both intrastate and interstate commerce.

3. Protestant, Custom Transport, Inc., protested the application for transfer of that portion of the authority authorizing transportation of cotton in bales, linters, motes, bagging, burlap, bale covering, textile sweepings and waste between all points and places within the State of North Carolina, as contained in paragraph 1 of the authority sought to be transferred, and protests the transfer of that portion of paragraph 3 of the authority authorizing transportation of cotton in bales from and to points and places on and east of U.S. Highway 25 in North Carolina on the ground that that authority is dormant, that that authority has not been exercised and has been abandoned by the applicant, Lowther Trucking Company, and that the transfer of same would create a new authority and deprive the protestant of business which it is authorized to and has been handling. There is no protest as to the transfer of the remainder of the authority.

4. As shown on applicant's Exhibit "B" introduced in evidence, applicant has made numerous hauls under the involved authority between January 16, 1968 and October 15, 1968, the date the application was filed. Most of these hauls were of composition boards, wooden boards or plywood, however, in May of 1968, applicant made four intrastate hauls of cotton.

5. Applicant has at all times up to the date of hearing held itself out to the public as ready, willing and able to transport the commodities involved in the protest, has solicited business for the hauling of said commodities but has not been very successful in obtaining such traffic due to the general decrease over the past few years in such traffic. For the reasons aforesaid, the Commission finds as a fact that applicant's authority to transport the commodities enumerated in the protest is not dormant.

6. That there are no debts or claims against the Transferor of the nature described in G.S. 62-111; that Transferee is ready, willing and able and has the experience and financial ability to perform the transportation service authorized by Certificate No. C-256 and that the transfer of same is justified by the public convenience and necessity.

7. That the proposal of Transferee to pledge Certificate No. C-256 to transferor to secure the purchase price of $60,000.00 is fair and reasonable and is compatible with accepted business practices.

8. The Commission finds that the authority sought to be transferred contains certain duplicative language in paragraph 1 and paragraph 3 thereof and for the purpose of clarification, the Commission, on its own motion, has stricken from paragraph 3 of the authority the words, "cotton in bales."

Based upon the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

As stated in the Calendar of Hearings issued November 6, 1968, giving notice to the public of the application sought to be approved herein, if no protests had been filed there would have been no hearing and the application would have been considered by the Commission on the basis of the documentary evidence attached thereto, the sworn affirmations in the application itself, and the records of the Commission and it would have, no doubt, been approved.

The protest filed herein is limited solely to the transfer of the authority to haul cotton in bales, linters, motes, bagging, burlap, bale covering, textile sweepings and waste, and brings into question the right of applicants to transfer said portion of the authority on the ground that that portion thereof is dormant and has been abandoned by the applicant. The evidence does not support the protestants contention, but tends to show that the applicant transferor has in fact hauled some of such commodities and has held itself out to haul and solicited the business of hauling such commodities, though not very successfully.

The Commission has consistently held that a carrier's authority does not become dormant so long as such carrier actively seeks to exercise such authority even though he may not be successful.

As to certain of the other commodities contained in the authority, there has been no protest of applicant's right to transfer the authority to haul such commodities and the Commission does not feel called upon in this proceeding to determine whether or not those portions of its authority are or are not dormant. In the absence of evidence to the contrary, it would appear that such portions are not dormant. Furthermore, applicant has not been put on any notice in this proceeding to defend the question as to the remainder of its authority either by a protestant or by the Commission.

It would, therefore, appear by the evidence of record that the transfer ought to be approved.

IT IS, THEREFORE, ORDERED:

1. That the application in this docket be and it is hereby approved and that Lowther Trucking Company is hereby permitted to sell the authority contained in Common Carrier Certificate No. C-256 as set out in Exhibit B hereto attached to Carolina Trucking Company, Inc.

2. That Carolina Trucking Company, Inc. is hereby authorized to purchase and operate said authority.

3. That Carolina Trucking Company, Inc. is hereby granted 30 days after the date of this Order to complete its transaction with Lowther Trucking Company; to file with this

Commission its list of equipment, schedule of minimum rates, evidence of financial security for the protection of the traveling and shipping public and otherwise comply with all rules and regulations of this Commission.

IT IS FURTHER ORDERED That applicant, Carolina Trucking Company, Inc., is hereby authorized to pledge Certificate No. C-256 to Lowther Trucking Company to secure the purchase price of said certificate in the sum of $60,000.00 with interest at the rate of six per cent per annum, payable in weekly installments of $135.11 each beginning January 3, 1969.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1441 Lowther Trucking Company.
Irregular Route Common Carrier
Charlotte, North Carolina

EXHIBIT B

(1) Transportation of cotton in bales, fertilizer and fertilizer materials, linters, motes, bagging, burlap, bale covering, bale ties, textile sweepings and waste between all points and places within the State of North Carolina.

(2) Transportation of pyrophyllite ground, in bags from Robbins, North Carolina, to Charlotte, North Carolina.

(3) Transportation of fertilizer and fertilizer materials, canned goods, cast iron pipe, plumbing supplies, hardware and farm implements from and to points and places on and east of U.S. Highway 25 in North Carolina.

(4) Flour from Statesville to Monroe and from Statesville to Charlotte.

(3) and (4) LIMITATION: Truckloads only.

(5) Transportation of general commodities, except those requiring special equipment and except unmanufactured tobacco in hogsheads from warehouse to redrying plants, over irregular routes between points and places within the following counties: Catawba, Rowan,

Mecklenburg, Robeson, Columbus, Bladen, Cumberland, Sampson, Duplin, New Hanover, Martin, Pender, Brunswick, Scotland, Wilson and Montgomery.

(6) Building materials, over irregular routes between points and places within the following counties: Guilford, Alamance, Edgecombe, Chatham, Moore, Sampson, Bladen, Pender, Cumberland and Nash.

(7) Gravel, over irregular routes, between points and places within the counties of Harnett and Bladen.

(8) Transportation of Plywood, veneer and other wood composition boards or sheets usually transported in flat-bed trucks, in truckloads only, between all points and places within the State of North Carolina.

DOCKET NO. T-343, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sale and transfer of portion of Certificate No. C-154 from B & G Transport, Incorporated, to Quillian Junior Cauthen, d/b/a Cauthen Gin and Bag Company, Route 4, Box 550, Monroe, North Carolina) ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, October 31, 1968, at 2:00 p.m.

BEFORE: Commissioners M. Alexander Biggs, Jr., presiding, John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicants:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

For the Protestants:

T. D. Bunn
Hatch, Little, Bunn & Jones
Attorneys at Law
327 Hillsborough Street

Raleigh, North Carolina
For: Overnite Transportation Company
Thurston Motor Lines, Inc.

BY THE COMMISSION: By joint application filed with the Commission on September 3, 1968, B & G Transport, Incorporated (Transferor), Route 1, Saint Pauls, North Carolina, and Quillian Junior Cauthen, d/b/a Cauthen Gin and Bag Company (Transferee), Route 4, Box 550, Monroe, North Carolina, seek approval of the transfer from said Transferor to said Transferee of that portion of Common Carrier Certificate No. C-154 which reads as follows:

"Transportation of textiles and textile mill machinery and supplies over irregular routes between Bladenboro and Charlotte; from Bladenboro to all points and places in the Counties of Polk, Cleveland, Burke, Catawba, Gaston, Surry, Forsyth, Rockingham, Guilford, Stanly, Anson, Moore, Alamance, Person, Wake, Cumberland, New Hanover and Cabarrus.

"Transportation of plumber's supplies over irregular routes between Wilmington, Charlotte and Fayetteville; from Charlotte to Camp Davis; from Camp Butner to Goldsboro; from Wilmington to Camp Butner; from Lilesville to Bladenboro; from Wilmington to Elizabeth City, Carolina Beach, Graham and Concord.

"Transportation of veneer, plywood and lumber over irregular routes between all points and places in the Counties of Bladen and New Hanover; from Clarkton to Fayetteville and High Point; from Wilmington to Oak Grove and Cherry Point; from Whiteville to Atlantic; from Camp Davis to Fort Bragg; from Charlotte to Bladenboro; from Fairmont to Daystrom and North Wilkesboro; from Lexington to Maxton."

The application with a description of the rights involved in the proposed transfer, along with the time and place of hearing was published in the September 10, 1968, issue of the Commission's Calendar of Truck Hearings, with the provision that if no protests were filed by 5:00 p.m., Tuesday, October 21, 1968, the case would be decided on the basis of the application, the documentary evidence attached thereto and the records of the Commission pertaining thereto and no hearing would be held. A joint protest was timely filed by Overnite Transportation Company and Thurston Motor Lines, Inc., and the hearing was held as scheduled.

All parties were present or represented by counsel.

The evidence for the applicants tends to show that Transferor acquired the involved operating rights by purchase from T.C. Dowless, d/b/a T.C. Dowless Transfer, said acquisition being approved by the Commission in its Order of December 8, 1967; that from the time said operating rights were activated by B & G Transport, Incorporated, on

January 1, 1968, until they were suspended at carrier's request by Order of the Commission dated September 5, 1968, said company held itself out to the general public, by solicitation and otherwise, to engage in the transportation authorized; that up to the time this application was filed, service had been continuously offered to the public; that said rights were not acquired for the purpose of sale and that the proposed sale and transfer was prompted solely by the fact that Transferor had sustained a substantial loss during the brief period it had been in operation. It appears further that there are no debts or claims against Transferor of the nature specified in G.S. 62-111; that the transferee has had some twenty (20) years experience in the trucking business and is qualified, financially and otherwise, to furnish adequate and continuing service under the authority which it seeks to acquire in this proceeding.

Evidence for Protestant, Overnite Transportation Company, fails to reveal any manner in which the proposed transfer would unlawfully affect the service to the public by it or any other existing motor carrier. Oral testimony was not offered by Protestant, Thurston Motor Lines, Inc.

Upon consideration of the application, the records of the Commission and the evidence of record, the Commission makes the following

FINDINGS OF FACT

1. That Transferor, B & G Transport, Incorporated, is the holder of Common Carrier Certificate No. C-154, having acquired said certificate from T.C. Dowless, d/b/a T.C. Dowless Transfer, by Order of the Commission dated December 8, 1967, and that there are no debts or claims against Transferor of the nature specified in G.S. 62-111.

2. That Transferee, Quillian Junior Cauthen, d/b/a Cauthen Gin and Bag Company, is an individual with some twenty (20) years experience in the transportation business and is qualified, financially and otherwise, to acquire said certificate and to provide adequate and continuing service thereunder.

3. That Transferor and Transferee have entered into an agreement for the sale and transfer of the operating rights involved herein.

4. That the authority proposed to be transferred has been continuously offered to the public up to the time said authority was suspended on September 5, 1968.

5. That the proposed sale of operating rights is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other carriers, and that Transferee is fit, willing and able to perform such service to the public under such franchise.

Based upon the application, the evidence presented in this case and the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

The Commission has generally and for the most part held to the view that five (5) things are primarily essential to the sale of operating rights. 1. The seller must be the owner of the rights. 2. The operation under the rights must have been continuously offered to the public up to the time of filing the transfer application. 3. There must be a contract or agreement between transferor and transferee for the sale. 4. The purchaser or the transferee must be fit, able and willing to render service under the authority on a continuing basis. 5. The seller must file a statement under oath with respect to debts and claims.

The evidence offered, and the application and records of the Commission of which judicial notice is taken, justify findings that all five of these requirements have been met. No serious question has been raised as to the ownership of the certificate, the sale agreement or as to the ability, fitness or willingness of the would be purchaser.

On the surface, the protestants charge of dormancy, which is their only interest in the matter, appears to have merit; however, the record clearly shows that service has been continuously offered to the public up to the time the transfer application was filed. Transferor had the necessary equipment and actively solicited business. G.S. 62-111 (e) provides as follows:

"The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5)." Emphasis added.

The Commission concludes that Applicants have borne the burden of proof required and that said sale and transfer should be approved.

IT IS, THEREFORE, ORDERED That the sale and transfer of a portion of the authority contained in Common Carrier Certificate No. C-154 as particularly described in Exhibit B hereto attached from B & G Transport, Incorporated, to

Quillian Junior Cauthen, d/b/a Cauthen Gin and Bag Company, Route 4, Box 550, Monroe, North Carolina, be, and the same is, hereby approved.

IT IS FURTHER ORDERED That Quillian Junior Cauthen, d/b/a Cauthen Gin and Bag Company, file with the Commission a tariff of rates and charges and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date of this order.

IT IS FURTHER ORDERED That Common Carrier Certificate No. C-154 in the name of B & G Transport, Incorporated, be, and the same is, hereby cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-343
SUB 4

Quillian Junior Cauthen, d/b/a
Cauthen Gin and Bag Company
Route 4, Box 550
Monroe, North Carolina

EXHIBIT B

Irregular Route Common Carrier Authority

(4) Transportation of textiles and textile mill machinery and supplies over irregular routes between Bladenboro and Charlotte; from Bladenboro to all points and places in the Counties of Polk, Cleveland, Burke, Catawba, Gaston, Surry, Forsyth, Rockingham, Guilford, Stanly, Anson, Moore, Alamance, Person, Wake, Cumberland, New Hanover and Cabarrus.

(5) Transportation of plumber's supplies over irregular routes between Wilmington, Charlotte and Fayetteville; from Charlotte to Camp Davis; from Camp Butner to Goldsboro; from Wilmington to Camp Butner; from Lilesville to Bladenboro; from Wilmington to Elizabeth City, Carolina Beach, Graham and Concord.

(6) Transportation of veneer, plywood and lumber over irregular routes between all points and places in the Counties of Bladen and New Hanover; from Clarkton to Fayetteville and High Point; from Wilmington to Oak Grove and Cherry Point; from Whiteville to

Atlantic; from Camp Davis to Fort Bragg; from Charlotte to Bladenboro; from Fairmont to Daystrom and North Wilkesboro; from Lexington to Maxton.

DOCKET NO. T-663, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application for sale and transfer of Common Carrier Certificate No. C-514 from Ryder Truck Lines, Inc., P. O. Box 2408, Jacksonville, Florida 32203, to Chemical Leaman Tank Lines, Inc., 520 East Lancaster Avenue, Downingtown, Pennsylvania 19335	) RECOMMENDED) ORDER))))

HEARD IN: Hearing Room of the Commission, Library Building, Raleigh, North Carolina, on Thursday, March 23, 1967, at 10:00 a.m.

BEFORE: Commissioners Clarence H. Noah, Thomas R. Eller, Jr., and John W. McDevitt (presiding)

APPEARANCES:

For the Applicants:

J. Archie Cannon
and James B. Wolfe, Jr.
Cannon, Wolfe & Coggin
Attorneys at Law
P. O. Box 2307
Greensboro, North Carolina
For: Ryder Tank Lines, Division of Ryder Truck Lines, Inc. and
Chemical Leaman Tank Lines, Inc.

Leonard A. Jaskiewicz
Grove, Jaskiewicz, and Gillam
Attorneys at Law
Madison Building
1155 Fifteenth, NW
Washington, D.C.
For: Chemical Leaman Tank Lines, Inc.

No Protestants.

McDEVITT AND ELLER, HEARING COMMISSIONERS: Ryder Truck Lines, Inc., of Jacksonville, Florida, and Chemical Leaman Tank Lines, Inc., Downington, Pennsylvania, filed joint application on December 15, 1966, whereby Ryder Truck Lines, Inc. (Transferor), proposes to sell and transfer its properties d/b/a Ryder Tank Lines, Tank Division of Ryder Truck Lines, Inc., under North Carolina Certificate No. C-514 to Chemical Leaman Tank Lines, Inc.; and Chemical Leaman

Tank Lines, Inc. (Transferee), proposes to purchase and operate under Certificate No. C-514.

Public hearing was scheduled and held as captioned. Protest was filed by Central Transport, Inc., of High Point, North Carolina, on March 13, 1967; however, the protest was withdrawn prior to the hearing. No one appeared at the hearing to offer protest or objection. Transferor and Transferee were present with witnesses and counsel.

Commissioners Noah, Eller, and McDevitt heard these proceedings. Commissioners Eller and McDevitt were members of the Commission when the case was at issue for decision. Therefore, this is a Recommended Order issued pursuant to G.S. 62-76(b).

From the testimony, exhibits, and other evidence offered at the hearing, we make the following

FINDINGS OF FACT

1. Ryder Truck Lines, Inc., a Tennessee corporation, operates its tank line division, Ryder Tank Lines, Greensboro, North Carolina, under North Carolina Certificate No. C-514. The authority contained in Certificate No. C-514 was leased to Chemical Leaman Tank Lines, Inc., under North Carolina Utilities Commission Order dated December 21, 1966, in Docket No. T-663, Sub 13.

2. By Agreement dated February 17, 1967, between Ryder Truck Lines, Inc., Chemical Leaman Tank Lines, Inc., and International Utilities, Inc., Transferor agreed to sell and transfer the authority under Certificate No. C-514 to Chemical Leaman Tank Lines, Inc.; and Transferee agreed to purchase Certificate No. C-514 according to specified terms and conditions.

3. Transferor certified that it has debts amounting to approximately $291,424 in accounts payable and $4,482,820 in loans; that no debts are in default; that it does not owe any debts or claims for gross receipts, use or privilege taxes, for wages, unremitted C.O.D. collections, loss of or damage to goods transported, overcharges, or for interline accounts due carriers all as enumerated in G.S. 62-111(c).

4. Chemical Leaman Tank Lines, Inc., is a Delaware corporation organized under the laws of the State of Delaware and is authorized by the Secretary of State to transact business in the State of North Carolina. Transferee has engaged in the transportation of bulk commodities in interstate and intrastate commerce for several years. Transferee's balance sheet, as of December 31, 1966, discloses total Capital and Surplus of $9,626,694.

5. The sale and transfer of Common Carrier Certificate No. C-514 to Transferee will not create an additional

carrier in competition with existing carriers, and the transfer of said certificate will be in the public interest.

CONCLUSIONS

1. The proposed sale and transfer is reasonably justified by public convenience and necessity within contemplation of G.S. 62-111(a).

2. Chemical Leaman Tank Lines, Inc., is ready, willing, and able, financially and otherwise, to engage in the transportation of bulk commodities enumerated in Exhibit B hereto attached, within the territory and over the highway routes therein described, and to provide on a continuing basis all public services and perform all duties and obligations required or authorized by Certificate No. C-514.

THEREFORE, IT IS ORDERED:

1. That the sale and transfer of motor freight Common Carrier Certificate No. C-514 from Ryder Truck Lines, Inc., to Chemical Leaman Tank Lines, Inc., be, and the same is hereby, approved.

2. That Chemical Leaman Tank Lines, Inc., is authorized to purchase and operate under the authority contained in Certificate No. C-514.

3. That Ryder forward Certificate No. C-514 to the Commission for cancellation. The Chief Clerk shall cancel Certificate No. C-514 and issue a certificate to Chemical Leaman Tank Lines, Inc., reflecting the authority contained in Exhibit B hereto attached and made a part of this order. Pending compliance with this provision, this order shall constitute the authority herein authorized.

4. That Chemical Leaman Tank Lines, Inc., advise this Commission in writing when the sale and transfer of Common Carrier Certificate No. C-514 from Ryder Truck Lines, Inc., to Chemical Leaman Tank Lines, Inc., has been consummated, and upon such consummation, the temporary authority heretofore granted Chemical Leaman Tank Lines, Inc., to lease and operate the authority now contained in said certificate be cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of January, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. T-663
SUB 13

Chemical Leaman Tank Lines, Inc.
520 East Lancaster Avenue
Downingtown, Pennsylvania 19335

Irregular Route Common Carrier Authority

EXHIBIT B

1. Transportation of liquid commodities, in bulk, in tank vehicles and including Acetic Acid, Urea Formaldehyde Resin, generally known as glue, and other types of glue and glue products; and Liquid Chemicals, but excluding petroleum and petroleum products, bituminous materials, and bituminous products, milk and milk products, over irregular routes between points and places in North Carolina.

2. Transportation of catalyst or glue hardener, in drums, limited to shipments of not more than four drums moving on the same tank vehicle as is used to transport the bulk commodities when transporting liquid glues, formaldehydes, synthetic resins and plastic binders in bulk, in tank vehicles, over irregular routes, between all points and places in the State of North Carolina.

3. Transportation of petroleum and petroleum products in bulk in tank trucks, over irregular routes, from existing originating terminals at or near Wilmington, Morehead City, River Terminal, Thrift, Friendship, Selma, Apex, Fayetteville and Salisbury to points and places throughout the State of North Carolina and of gasoline, kerosene, fuel oils and naphthas, in bulk, in tank trucks, over irregular routes between all points and places within the territory it is now authorized to make deliveries from presently authorized originating terminals.

4. Transportation of liquefied petroleum gas in bulk, in tank trucks, from all originating terminals of such liquefied petroleum gas to points within the territory described in above paragraph (3).

5. The transportation of phosphate products, including phosphorus chloride, phosphorus sulfide, red phosphorus, phosphorus oxide, phosphoric acids, calcium phosphates, ammonium phosphates, sulphuric acid,

normal super phosphate, enriched super phosphate, triple super phosphate, concentrated phosphoric acid, sodium phosphates and other phosphate derivative products or phosphate contained products, in bulk, in tank and/or hopper vehicles, from the Texas Gulf Sulphur Company plant site or sites in Beaufort County, North Carolina, and from points and places within a five (5) mile air-line radius thereof, to all points and places in North Carolina and refused or unclaimed products on return.

DOCKET NO. T-1282, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of James R. Musgrave, Jr. and Albert Carl Goit, P. O. Box 1062, Goldsboro, North Carolina, for Sale and Transfer of Stock of Faircloth Moving and Storage Company, P. O. Box 1531, Goldsboro, North Carolina) ORDER

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, on September 26, 1968

BEFORE: Commissioners Clawson L. Williams, Jr. (Presiding), Thomas R. Eller, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Petitioners:

Henson P. Barnes, Esq.
Attorney at Law
P. O. Box 1582, Goldsboro, North Carolina

For the Commission Staff:

Larry G. Ford, Esq.
Associate Commission Attorney

WILLIAMS, COMMISSIONER: Petition was filed with the Commission on July 30, 1968 by James R. Musgrave, Jr. and Albert Carl Goit, P. O. Box 1062, Goldsboro, North Carolina, seeking approval of the Commission for the transfer of control of Faircloth Moving & Storage Company through the purchase of 100 per cent of the outstanding shares of stock of said corporation from Ray Faircloth and Nick Gwaltney.

Notice of the Petition, together with a description of the rights involved in the proposed transfer and the time and place of hearing was duly given in the August 15, 1968 issue of the Commission's Calendar of Hearings.

The hearing was held at the time and place shown in the caption and from the testimony and exhibits introduced at the hearing the Commission makes the following

FINDINGS OF FACT

1. That Faircloth Moving and Storage Company is a corporation duly organized and existing under the laws of the State of North Carolina with its principal office in Goldsboro, Wayne County, North Carolina.

2. That said corporation is the holder of Common Carrier Certificate No. C-873 issued by the North Carolina Utilities Commission authorizing transportation of certain commodities within the area designated in said certificate.

3. That on April 12, 1966, the Petitioners entered into a purchase money contract with Nicholas D. Gwaltney and Willie Ray Faircloth for the purchase of 100 per cent of the outstanding shares of stock of Faircloth Moving and Storage Company for the sum of $14,000.00 said amount to be paid in equal monthly installments, with ownership of said stock reverting to the sellers in the event of default in payment.

4. That the Petitioners were not aware at the time said contract was entered into that it was necessary for them to obtain the approval of the Commission.

5. That Faircloth Moving and Storage Company has operated and is presently operating the certificate hereinbefore referred to; that the change in control has in no way affected or diminished the present service available to the people of the State of North Carolina.

6. That Petitioners have no interest in any other common carrier operating under authority of a certificate issued by this Commission, and the acquisition of control of Faircloth Moving and Storage Company by the Petitioners will in no way result in joint or common control of two or more carriers as contemplated by the rules of the Commission.

7. The Petitioners were requested to file, as late exhibits, a copy of the Articles of Incorporation of Faircloth Moving and Storage Company and a copy of the purchase money contract for the transfer of the stock involved in this transaction. These exhibits were received by this Commission and filed with the Chief Clerk on September 30, 1968.

CONCLUSIONS

Based upon the record, the evidence presented at the hearing in this case and the foregoing Findings of Fact, it is the conclusion of the Commission that the approval sought by the Petitioners is justified by the public convenience and necessity and should be granted.

IT IS, THEREFORE, ORDERED That the sale and transfer of 100 per cent of the capital stock of Faircloth Moving and Storage Company from Nicholas D. Gwaltney and Willie Ray Faircloth to J. Robert Musgrave, Jr. and A.C. Goit be and the same is hereby approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-529, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sale and transfer of Certificate No. C-430) RECOMMENDED
from Thomas Marvin Samuel, d/b/a Thomas M.) ORDER
Samuel, to H & W Trucking Company)

HEARD IN: The Offices of the Commission, Raleigh, North Carolina, on March 19, 1968, at 10:00 o'clock a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicants:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

For the Protestants:

A. W. Flynn, Jr.
York, Boyd & Flynn
Attorneys at Law
P. O. Box 127
Greensboro, North Carolina
For: Davis Moving & Storage Co.
Haynes Transfer
Hobby's Transfer and Storage Company, Inc.
Wainwright Transfer Company
Kenneth W. Goodwin Transfer Company

Yarbrough Transfer Company
Lentz Transfer & Storage Co.
Tatum-Dalton Transfer Company

HUGHES, EXAMINER: By joint application filed with the Commission on January 15, 1968, Thomas Marvin Samuel, d/b/a Thomas M. Samuel (Transferor), Mount Airy, North Carolina, and H & W Trucking Company (Transferee), Mount Airy, North Carolina, seek approval of the transfer of Common Carrier Certificate No. C-430 from said Transferor to said Transferee.

Notice of said application, together with a description of the involved operating rights, along with the time and place of hearing was published in the Commission's Calendar of Hearings issued January 16, 1968. A joint protest thereto was filed within apt time by Davis Moving & Storage Co., and Haynes Transfer, of Mount Airy, North Carolina; Hobby's Transfer and Storage Company, Inc., of Raleigh, North Carolina; Wainwright Transfer Company, of Jacksonville, North Carolina; Kenneth W. Goodwin Transfer Company, Yarbrough Transfer Company, and Lentz Transfer & Storage Co., of Winston-Salem, North Carolina, and Tatum-Dalton Transfer Company, of Greensboro, North Carolina.

All parties were either present or represented by counsel.

Protestants only oppose the transfer of that portion of the involved authority which relates to the transportation of household goods. As to said authority, Protestants allege dormancy and request that said household goods authority be cancelled, pursuant to the provisions of G.S. 62-112(c).

The evidence tends to show that Transferor acquired the involved operating rights from the widow of Fred Samuel, the original owner of said rights who died some three or four years ago; that at the time of purchasing said rights, said Transferor had an understanding with Mrs. Samuel that if the rights were subsequently sold by him she would receive the proceeds of such sale; that although Transferor's operating revenues for the year 1966 were some $4,000.00, he is not sure whether any of said revenue was for the transportation of household goods; that in the latter part of 1967, he moved one person between points within the Town of Mount Airy and about three weeks ago moved a lady out towards Pilot Mountain; that he has never issued a household goods freight bill and has never, since obtaining the rights, transported household goods from Mount Airy to another town.

Other than household goods, Transferor's authority has been reasonably active. In any case, the issue of dormancy was not raised as to such other authority and no evidence was received which would indicate dormancy.

It further appears from the evidence that Transferee is a corporation incorporated under the laws of the State of North Carolina in November 1966; that the owners of transferee corporation have had some twenty-five (25) years experience in the transportation of exempt commodities; that Transferor and Transferee have entered into an oral contract; that a check in the amount of $1,000, the total consideration involved in the proposed transaction, has been issued by Transferee to Mrs. Fred Samuel and that she is holding the check pending approval of the transfer by the Commission. It further appears that Transferee has a net worth in the amount of some $61,000.00.

At the conclusion of the hearing, parties announced that it was their desire to exercise their privilege of filing briefs. Attorneys were granted thirty (30) days from the date of mailing of the transcripts within which to file such briefs.

By Petition and Motion filed with the Commission on April 3, 1968, Applicants, in effect, moved to eliminate household goods authority from the application and suggested that the Commission take such action regarding said rights as it deemed fit and proper. Protestants in their Response to Petition and Motion of Applicants waived their right to file briefs in this proceeding and further stated that Protestants do not oppose the transfer of the involved authority, provided there is excluded from such transfer that portion authorizing the transportation of household goods. Protestants further renewed their Motion that said household goods authority be cancelled by reason of the fact that such operating authority has become dormant.

Upon consideration of the application, the evidence of record, the Petition and Motion of Applicants and Respondent's Response to Petition and Motion of Applicants, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That Transferor, Thomas Marvin Samuel, d/b/a Thomas M. Samuel, is the holder of Certificate No. C-430, having acquired said certificate from the widow of his brother, Fred Samuel, the original owner, by Order of the Commission dated October 15, 1963, and that there are no debts or claims against Transferor.

2. That Transferee, H & W Trucking Company is a North Carolina corporation engaged in exempt transportation; that the owners of said corporation have had some twenty-five (25) years experience in the transportation business and are qualified, financially and otherwise, to acquire said certificate and provide adequate and continuing service thereunder.

3. That the household goods authority in Certificate No. C-430, by failure of Transferor to perform service

thereunder, has been in a state of dormancy since the authority was acquired by Transferor and that Transferor has never obtained permission to suspend operations under the provisions of G.S. 62-112(b)(5) and the rules and regulations of the Utilities Commission issued thereunder.

4. That pursuant to Finding of Fact No. 3 the household goods authority as contained in Certificate No. C-430 should be cancelled.

5. That those portions of authority contained in Certificate No. C-430, other than household goods authority, are active and that the transfer thereof from Transferor to Transferee should be approved.

CONCLUSIONS

G.S. 62-112(c) provides, among other things, that "The franchise of a motor carrier may be cancelled under the provisions of this section in any proceeding to sell or transfer or otherwise change control of said franchise brought under the provisions of G.S. 62-111, upon findings of dormancy as provided in this section."

Based upon the application, the applicable law, the evidence presented in this case, and the foregoing findings of fact, the Hearing Examiner concludes that the household goods authority as contained in Certificate No. C-430 should be cancelled and that the transfer of the other portions of authority as contained in said certificate should be approved.

IT IS, THEREFORE, ORDERED That the sale and transfer of the authority contained in Common Carrier Certificate No. C-430 (other than Group 18, Household Goods) as particularly described in Exhibit B hereto attached from Thomas Marvin Samuel, d/b/a Thomas M. Samuel to H & W Trucking Company be, and the same is, hereby approved.

IT IS FURTHER ORDERED That Group 18, Household Goods, as contained in Common Carrier Certificate No. C-430 be, and the same is, hereby cancelled.

IT IS FURTHER ORDERED That H & W Trucking Company file with the Commission a tariff of rates and charges, certificates of the required insurance, lists of equipment, designation of process agent, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date that this order becomes final.

IT IS FURTHER ORDERED That Exemption Certificate No. E-12317 be, and the same is, hereby cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-529
SUB 4

H & H Trucking Company
237 Starlite Road
Mount Airy, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

(1) Transportation of leaf tobacco and accessories as defined in Docket 2417 from Mount Airy, Stoneville and Madison to Winston-Salem; accessories on return haul.

(2) Transportation of fertilizer and farm machinery from Charlotte and Greensboro to points and places in Surry County.

(3) Transportation of livestock from Charlotte and Greensboro to points and places in Surry County and from points and places in Surry County to Charlotte and Greensboro.

DOCKET NO. T-552, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application for Sale and Transfer of Certificate No. C-436 from Leo Sellers, d/b/a Sellers Transfer, Rowland, North Carolina, to Albert Oscar McCauley, d/b/a McCauley's Moving and Storage, 135 C Street, Fayetteville, North Carolina	) ORDER APPROVING) SALE AND) TRANSFER OF) OPERATING) AUTHORITY)

HEARD IN: The Commission Hearing Room, Old YMCA Building, Raleigh, North Carolina, on January 30, 1968, at 2:00 p.m.

BEFORE: Commissioners Thomas R. Eller, Jr., M. Alexander Biggs, Jr. and Clawson L. Williams, Jr. (Presiding)

APPEARANCES:

For the Applicants:

Phillip C. Ransdell, Attorney
507 Branch Bank Building
Raleigh, North Carolina

Thomas Steed, Jr., Attorney
Allen, Steed & Pullen
P. O. Box 2058, Raleigh, North Carolina

No Protestants.

WILLIAMS, COMMISSIONER: This is a joint application filed on November 22, 1967, by which Albert Oscar McCauley, d/b/a McCauley's Moving and Storage, seeks approval to purchase, and by which Leo Sellers, d/b/a Sellers Transfer seeks approval to sell Common Carrier Certificate No. C-436.

The matter was set for hearing after due notice on January 30, 1968 at 2:00 p.m.

From the evidence presented at the hearing and the sworn statements contained in the application, the Commission makes the following

FINDINGS OF FACT

1. That the applicant, Leo Sellers, d/b/a Sellers Transfer, is the holder of Common Carrier Certificate No. C-436 and has been in operation under the authority contained therein, which authority is set forth in Exhibit "B" attached hereto, until June 30, 1967, at which time the said Sellers suspended operations under said certificate.

2. That by Order, dated January 29, 1968, the said Sellers was permitted by the Commission to suspend operations under Certificate No. C-436, effective June 30, 1968, nunc pro tunc.

3. That the applicants have orally contracted with each other for McCauley to purchase, and Sellers to sell, Certificate No. C-436 for the total cash consideration of $2,000.00, to be paid upon approval by the Commission of the transfer herein sought.

4. That the applicant, McCauley, has assets in the sum of approximately $55,750.00, consisting of rolling equipment and cash, and has liabilities of approximately $16,000.00, and a net worth of about $39,750.00.

5. That the applicant, McCauley, has been in the moving and hauling business for approximately eight years, and has been in the moving business as a proprietorship since 1965, in a capacity exempt from regulation by this Commission.

6. That there are no debts or claims as specified under G.S. 62-111(c) against the applicant, Sellers, d/b/a Sellers Transfer.

Based upon the following Findings of Fact, the Commission reaches the following

CONCLUSIONS

1. That the sale and transfer proposed herein is justified by the public convenience and necessity as contemplated by G.S. 62-111(a).

2. That the applicant, McCauley, is financially solvent and is in all respects fit, ready, willing and able to provide the services authorized under Certificate No. C-436 on a continuing basis.

3. The applicants have borne the burden of proof required by the Statutes and the proposed sale and transfer should be approved.

Accordingly, IT IS ORDERED:

1. That the application in this docket be and it is hereby approved and the applicant, Leo Sellers, is hereby permitted to sell the authority contained in Common Carrier Certificate No. C-436 to Albert Oscar McCauley, d/b/a McCauley's Moving and Storage and Albert Oscar McCauley is hereby authorized to purchase and operate under the authority of said certificate.

2. The applicant, Leo Sellers, shall forthwith submit Common Carrier Certificate No. C-436 to the Chief Clerk of this Commission and upon receipt thereof the same shall be cancelled and a new certificate of the same number shall be issued to Albert Oscar McCauley, d/b/a McCauley's Moving and Storage, in accordance with Exhibit "B" attached hereto and made a part hereof.

3. The applicant, Albert Oscar McCauley, is hereby granted 30 days from the date of this Order to complete his transaction with applicant, Leo Sellers, to file with this Commission his list of equipment, schedule of minimum rates, evidence of financial security for the protection of the traveling and shipping public and otherwise comply with all rules and regulations of this Commission.

4. Upon compliance with the provisions of this Order and issuance of a new certificate to the applicant, Albert Oscar McCauley, the Order issued by the Commission on January 29, 1968, suspending operations under Certificate No. C-436 shall be, by this order, vacated.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-552, Sub 1 Albert Oscar McCauley, d/b/a McCauley's Moving and Storage 135 C Street Fayetteville, North Carolina

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B Commodity and Territory Description:

"(1) Transportation of cotton in bales; cotton bagging and ties; leaf tobacco from farms to market only; fertilizer and fertilizer materials; lumber, rough and dressed; furniture squares; plywood and veneer panels; brick; concrete and cinder blocks; drain tile; lime and cement; gravel; hay; corn; peanuts; potatoes; manufactured feeds; cotton seed; cottonseed meal; cantaloupes; watermelons; and farm produce including orchard products:

"(a) To and from points within a radius of twenty-five miles of Rowland.

"(b) From said area to points and places in North Carolina bounded on the east by a line through Wilmington, Goldsboro, Wilson, Rocky Mount and Weldon, and on the west by a line through Charlotte, Statesville, Elkin and Mount Airy.

"(c) From said destination territory to points and places within a radius of twenty-five miles of Rowland.

"LIMITATION: Truck Loads.

"(2) Transportation of personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and articles including objects of art, displays, and exhibits, which because of their unusual nature or value require

specialized handling and equipment usually employed in moving household goods, between all points and places.

Commodity and Territory Description: Throughout the State of North Carolina. This authority does not include materials used in the manufacture of furniture and the manufactured products hauled to or from such manufacturing plants."

DOCKET NO. T-1433

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sale and Transfer of Certificate No. C-698 from Roesel, Inc., (Burge Transfer & Storage Division) to Highland Moving and Storage Company, Inc.) RECOMMENDED ORDER

HEARD IN: The Offices of the Commission, Raleigh, North Carolina, on October 4, 1968, at 10:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicants:

N. H. Person
Williford, Person & Canady
Attorneys at Law
500 Lawyers Building
Fayetteville, North Carolina

No Protestants.

HUGHES, EXAMINER: By joint application filed with the Commission on August 8, 1968, Roesel, Inc. (Burge Transfer & Storage Division), (Transferor), Winston-Salem, North Carolina, and Highland Moving and Storage Company, Inc. (Transferee), 311 Alexander Street, Fayetteville, North Carolina, seek approval of the transfer of Common Carrier Certificate No. C-698 from said Transferor to said Transferee. Notice of the application, together with a description of the involved operating rights, along with the time and place of hearing was published in the Commission's Calendar of Hearings issued August 15, 1968.

The application is unopposed.

The evidence and records of the Commission tend to show that Transferor acquired the involved operating rights by purchase from Frank D. Burge, d/b/a Burge Transfer & Storage, said acquisition being approved by the Commission

in its order dated January 29, 1968; that said operating rights have been active since they were acquired by Transferor; that said rights were not acquired for the purpose of sale, but for the purpose of using them which, in fact, Transferor has been doing since said rights were acquired, and that the proposed sale of the rights is prompted by Transferor's decision to limit its activities to the warehousing and distribution business. It further appears from the evidence that there are no debts or claims now existing against Transferor of the nature specified in G.S. 62-111; that the owners and operators of transferee corporation have had some twelve and one-half (12 1/2) years experience in the intrastate transportation of household goods and are qualified, financially and otherwise, to furnish adequate and continuing service under the authority which they seek to acquire in this proceeding.

Upon consideration of the application, the records of the Commission and the evidence of record, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That Transferor, Roesel, Inc. (Burge Transfer & Storage Division), is the holder of Common Carrier Certificate No. C-698, having acquired said certificate from Frank D. Burge, d/b/a Burge Transfer & Storage, by order of the Commission dated January 29, 1968, and that there are no debts or claims against Transferor.

2. That Transferee, Highland Moving and Storage Company, Inc., is a North Carolina corporation engaged in exempt transportation; that the owners of said corporation have had some twelve and one-half (12 1/2) years experience in the transportation business and are qualified, financially and otherwise, to acquire said certificate and to provide adequate and continuing service thereunder.

3. That the authority proposed to be transferred is active, was not acquired for the purpose of sale, and that the transfer thereof from Transferor to Transferee should be approved.

CONCLUSIONS

Based upon the application, the evidence presented in this case and the foregoing findings of fact, the Hearing Examiner concludes that said sale and transfer should be approved.

IT IS, THEREFORE, ORDERED That the sale and transfer of the authority contained in Common Carrier Certificate No. C-698, as particularly described in Exhibit B hereto attached, from Roesel, Inc. (Burge Transfer & Storage Division), to Highland Moving and Storage Company, Inc., 311 Alexander Street, Fayetteville, North Carolina, be, and the same is, hereby approved.

IT IS FURTHER ORDERED That Highland Moving and Storage Company, Inc., file with the Commission a tariff of rates and charges, lists of equipment, designation of process agent, evidence of the required insurance, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date that this order becomes final.

IT IS FURTHER ORDERED That Exemption Certificate No. E-15322, heretofore issued to Highland Moving and Storage Company, Inc., be, and the same is, hereby cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1433

Highland Moving and Storage Company, Inc.
311 Alexander Street
Fayetteville, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods, between all points and places throughout the State of North Carolina. This authority does not include materials used in the manufacture of furniture and the manufactured products hauled to or from such manufacturing plants.

DOCKET NO. T-648, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Sale and Transfer of Certificate No. C-54 From Mrs. Guy Sutton, Mortgagee of Wood & Tugwell Transport & Trading Co., Inc., Route 1, Greenville, North Carolina, to Aaron Smith, P. O. Box 153, Dudley, North Carolina	) ORDER APPROVING) SALE AND) TRANSFER OF) CERTIFICATE))

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on August 7, 1968, at 2:00 p.m.

BEFORE: Harry T. Westcott, Chairman, (Presiding) and Commissioners Clawson L. Williams, Jr. and Thomas R. Eller, Jr.

APPEARANCES:

For the Applicants:

Sam O. Worthington, Esq.
Attorney at Law
P. O. Box 598, Greenville, North Carolina

For the Protestants:

T. D. Bunn, Esq.
Hatch, Little, Bunn & Jones
Attorneys at Law
P. O. Box 527, Raleigh, North Carolina
For: Overnite Transportation Company
Thurston Motor Lines, Inc.
Estes Express Lines
Helms Motor Express, Inc.

WILLIAMS, COMMISSIONER: By joint application filed with the Commission on July 3, 1968, Mrs. Guy Sutton, Mortgagee of Wood & Tugwell Transport & Trading Co., Inc., a corporation, as Transferor and Aaron Smith, P. O. Box 153, Dudley, North Carolina, as Transferee, seek approval of the transfer of Certificate No. C-54 to Aaron Smith. The authority contained in Certificate No. C-54 is shown in Exhibit B attached hereto.

Notice of the Application, together with a description of the rights involved in the proposed transfer and the time and place of hearing was duly given in the July 16, 1968 issue of the Commission's Calendar of Hearings with the provision that if no protests were filed by 4:30 p.m., August 2, 1968, the case would be decided on the basis of the application, the documentary evidence attached thereto and the records of the Commission pertaining thereto and no hearing would be held.

Within apt time on July 26, 1968, a protest was filed by Overnite Transportation Company, Thurston Motor Lines, Inc., Estes Express Lines and Helms Motor Express, Inc., all of which were represented by counsel at the hearing as appears in the caption. The hearing was held at the time and place shown in the caption and from the testimony and exhibits introduced at said hearing the Commission makes the following

FINDINGS OF FACT

1. Wood & Tugwell Transportation & Trading Co., Inc., a corporation, was the holder of Common Carrier Certificate No. C-54 having acquired same by purchase from Tayloe & Evans, Inc., which acquisition was approved by this Commission in Docket No. T-178, Sub 2 by Order dated March 16, 1966.

2. That Wood & Tugwell Transportation & Trading Co., Inc. (hereinafter referred to as Wood & Tugwell) on May 17, 1966 executed and delivered to Mrs. Guy Sutton, Route 1, Greenville, North Carolina, its promissory note in the sum of $19,900.00 and simultaneously to secure said note executed and delivered to Mrs. Sutton a chattel mortgage conveying to her for security certain tractors, trailers, and Common Carrier Certificate No. C-54, for valuable consideration.

3. That thereafter Wood and Tugwell defaulted on the payment of said note as provided therein and the said Mrs. Guy Sutton did, on June 12, 1968 after notice and due advertisement as required by law, foreclose said chattel mortgage and offer for sale the property therein conveyed and at said sale Mr. Guy Sutton became the last and highest bidder for Certificate No. C-54 for the sum of $1,500.00. Thereafter on July 1, 1968, the said Guy Sutton for valuable consideration transferred and assigned his bid on Certificate No. C-54 to Aaron Smith of Dudley, North Carolina, the Applicant Transferee herein.

4. That pursuant to a petition by Wood & Tugwell to suspend its operations for a period of six months, this Commission did by Order, dated February 28, 1968 in Docket No. T-178, Sub 2, grant Wood & Tugwell authority to suspend its operations for a period of six months, said suspension of operations beginning March 1, 1968 and terminating September 1, 1968.

5. That the Applicant Transferee, Aaron Smith, has some 20 years experience in the motor transportation business and holds Certificate No. 509 granted by this Commission in 1959. The said Aaron Smith has assets of approximately $105,150.00 and liabilities of approximately $19,000.00 and a net worth of $86,150.00 and is financially solvent and in all respects, fit, ready, willing and able to provide the services authorized under Certificate No. C-54 on a continuing basis.

6. That the note and chattel mortgage executed by Wood & Tugwell to Mrs. Guy Sutton, Applicant Transferor, described in Paragraph 2 above was issued for valuable consideration in an arm's-length transaction and said mortgage has been duly foreclosed according to law and the said Applicant Transferor hereby proposes to sell Certificate No., C-54 under a bona fide foreclosure proceeding.

7. That the Applicant Transferor, mortgagee of the holder of Certificate No. C-54, Wood & Tugwell, has made no showing as to debts, claims or taxes due by the mortgagor, Wood & Tugwell, of the nature set forth in G.S. 62-|||(c) for the reason that these are matters not within the knowledge of the Applicants, however, Applicants have made all reasonable efforts to ascertain and notify all creditors or claimants against the mortgagor, Wood & Tugwell.

8. That the applicants have filed no statements showing gross operating revenues and total number of miles traveled for the latest three months preceding the date of the Order to suspend operations as required by this Commission's Rule R2-8(b)(4) for the reason that these are matters of information not available to the Applicant Mortgagee of Wood & Tugwell.

On the basis of the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

The Protestants contest the transfer of the general commodity authority contained in Certificate No. C-54 as shown on Exhibit B attached hereto for the reason that the same is alleged not to have been operated and to have become dormant. Protestants contend that the applicants have failed to bear the burden of proof as required by G.S., 62-|||(c) and by Rule R2-8(b)(4) and moved for dismissal of the application upon this ground. Protestants offered no evidence other than to show that the Mortgagor, Wood & Tugwell, did not have an up-to-date filing with the Commission of a designated process agent. Protestants issued a subpoena duces tecum for the records of Wood & Tugwell regarding the intrastate shipments of general commodities for the period beginning January |, |968. However, Protestants were unable to obtain service of this subpoena upon the appropriate officers of Wood & Tugwell.

In the ordinary case of a transfer of a certificate of this nature, it would appear that Protestants' position is sound in that G.S. 62-|||(c) and R2-8(b)(4) do place the burden of proof of the matters set forth therein upon the seller. However, the last sentence of G.S. 62-|||(c) specifically exempts from the application of that subsection sales by personal representatives of deceased or incompetent persons and receivers or trustees in bankruptcy. It has been the policy of the Commission to apply this exemption also to bona fide mortgagees and it also has been the policy

of the Commission to waive Rule R2-8(b)(4) as to personal representatives of deceased or incompetent persons, receivers or trustees in bankruptcy and bona fide mortgagees.

The rationale of this policy is that a mortgagee is in much the same position as a personal representative or a Trustee in bankruptcy in that the information required by the statute and the rule is generally not available to the mortgagee and, notwithstanding other claims against the mortgagor, the mortgagee has a prior lien upon the certificate sought to be transferred.

To hold otherwise would render a mortgagee lien upon a certificate practically worthless for the reason that in only rare instances would such mortgagee be able to foreclose, sell and transfer the certificate for valuable consideration to be applied against the mortgagor's debt.

It is well recognized that Certificates of Public Convenience and Necessity held by a motor carrier are frequently transferred for substantial sums of money and are frequently mortgaged or pledged to secure an indebtedness of a holder thereof. To hold that a mortgagee cannot transfer such certificate without complying with G.S. 62-111 and R2-8(b)(4) would seriously impair the security of many lenders throughout the State.

We, therefore, find that the Protestants' motion to dismiss is properly overruled and that the Applicants have sufficiently borne the burden of proof and the sale and transfer proposed herein is justified by the public convenience and necessity.

IT IS, THEREFORE, ORDERED:

1. That the application in this docket is hereby approved and the Applicant, Mrs. Guy Sutton, Mortgagee, is hereby permitted to sell the authority contained in Common Carrier Certificate No. C-54 to Aaron Smith and Aaron Smith is hereby authorized to purchase and operate under the authority of said certificate.

2. The Applicant, Mrs. Guy Sutton, Mortgagee, shall forthwith submit Certificate No. C-54 to the office of the Chief Clerk of this Commission and upon receipt thereof the same shall be cancelled and a new certificate of the same number issued to Aaron Smith in accordance with Exhibit B attached hereto and made a part hereof.

3. The Applicant Transferor, Aaron Smith, is hereby granted 30 days from the date of this Order to complete his transaction with the Applicant, Mrs. Guy Sutton, to file with this Commission his list of equipment, schedule of minimum rates, evidence of financial security for the protection of the traveling and shipping public and

otherwise comply with all rules and regulations of this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-648, SUB 5

Aaron Smith
Irregular Route Common Carrier
P. O. Box 153
Dudley, North Carolina

EXHIBIT B

(1) Transportation of general commodities, except those requiring special equipment, over irregular routes between all points and places on and within the following described boundaries: From the Virginia-North Carolina State Line via U.S. Highway No. 301 to Smithfield, thence U.S. Highway No. 70 to Atlantic.

(2) Unmanufactured tobacco and tobacco manufacturer's accessories, cotton in bales, and peanuts over irregular routes between all points and places in North Carolina.

DOCKET NO. T-102, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application for Approval of Sale of Motor Carrier Operating Rights Under Certificate No. C-61 from Tennessee Carolina Transportation, Inc., 200 Atando Avenue, Charlotte, N. C., to Metro Express Delivery, Inc., 1703 West Independence Boulevard, Charlotte, N. C.	) ORDER) DENYING) APPROVAL) OF) TRANSFER)

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on June 18, 1968, at 10:00 a.m.

BEFORE: Commissioners M. Alexander Biggs, Jr., Presiding, John W. McDevitt, and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicants:

Reginald S. Hamel
Attorney at Law
1011 Law Building
Charlotte, North Carolina
For: Metro Express Delivery, Inc.

J. C. Hutcheson
Attorney at Law
Nance Lane, P. O. Box 7308
Nashville, Tennessee 37210
For: Tennessee Carolina Transportation, Inc.

For the Protestants:

T. D. Bunn
Hatch, Little, Bunn & Jones
Attorneys at Law
327 Hillsborough Street
Raleigh, North Carolina
For: Overnite Transportation Company
Thurston Motor Lines, Inc.

Ralph McDonald
Bailey, Dixon & Wooten
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Fredrickson Motor Express Corporation
Helms Motor Express, Inc.
Standard Trucking Company

BY THE COMMISSION: Under date of April 24, 1968, a joint application was filed with the North Carolina Utilities Commission by Metro Express Delivery, Inc., a North Carolina Corporation, of Charlotte, North Carolina (hereinafter called Metro), as transferee and Tennessee Carolina Transportation, Inc. of Charlotte, North Carolina (hereinafter called Tennessee Carolina), as transferor, seeking the approval of the Commission of the proposed sale and transfer of certain operating rights of the transferor, Tennessee Carolina to the transferee, Metro, as set forth in Tennessee Carolina's North Carolina intrastate Common Carrier Certificate No. C-61, said rights being described as follows:

"Transportation of general commodities, except those requiring special equipment, over irregular routes, from Charlotte to points and places in the counties of: Buncombe, Henderson, McDowell, Rutherford, Burke, Caldwell, Wilkes, Surry, Cleveland, Catawba, Alexander, Gaston, Lincoln, Iredell, Mecklenburg, Rowan, Davie, Forsyth, Rockingham, Cabarrus, Davidson, Guilford, Union, Stanly, Randolph, Alamance, Anson, Montgomery, Orange, Richmond, Moore, Lee, Durham, Granville, Vance, Scotland,

Wake, Halifax, Robeson, Cumberland, Johnston, Nash, Edgecombe, Sampson, Wayne, Wilson, Columbus, Duplin, Pitt, Lenoir, Beaufort, New Hanover and Craven."

Attached to the application was a copy of an agreement between the transferor and the transferee whereby Tennessee Carolina agrees that it had theretofore given an option for the purchase of its North Carolina intrastate operating authority to Mills Transfer & Storage, a North Carolina company (hereinafter called Mills), and that said option had been exercised by said Mills while still in effect on or before March 31, 1968, by the payment of the price of said option to Tennessee Carolina in the amount of $21,000, and that subsequent thereto the said Mills had notified Tennessee Carolina that it had transferred its rights under said exercised option to the proposed transferee here, Metro, and that said Tennessee Carolina acknowledged Metro as the transferee or assignee of the full rights provided for under the option to Mills, and Tennessee Carolina agreed to transfer to Metro its North Carolina operating authority, subject to approval of the Utilities Commission. The matter was set to be heard on June 18, 1968, on the calendar of hearings issued by the Commission on May 6, 1968. On May 22, 1968, a joint protest was filed by Overnite Transportation Company and Thurston Motor Lines, Inc. On June 18, 1968, a further joint protest to the sale and transfer was filed by Helms Motor Express, Inc. and Fredrickson Motor Express Corporation, and Standard Trucking Company.

The matter came on for hearing at the time and place calendared, as hereinabove set out. The petitioners and protestants were present and represented by counsel.

David Kennimer, District Manager of Tennessee Carolina, and Carlos H. Cooley, President of the transferee, Metro, testified and filed exhibits for the applicants. John B. Luckadoo, Traffic Manager of Thurston Motor Lines, Clarence H. Swanson, Traffic Manager of Overnite Transportation Company, R.A. Stephens, Traffic Manager of Fredrickson Motor Express, and Bruce Hooks, Traffic Manager of Helms Motor Express, all testified in opposition to the proposed sale and transfer.

From the evidence offered at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That the proposed seller Tennessee Carolina is a duly organized corporation with principal office in Nashville, Tennessee, and a business office in Charlotte, N.C., and holds North Carolina intrastate operating authority under Certificate No. C-61 issued by the Utilities Commission.

2. That the applicant transferee, Metro, is a North Carolina corporation with its principal office and place of

business in Charlotte, North Carolina. Metro has been engaged in motor transportation for some five years as an exempt carrier within the commercial zone of Charlotte, North Carolina.

3. That the protestants Fredrickson Motor Express Corporation, Helms Motor Express, Inc., Standard Trucking Company, Overnite Transportation Company and Thurston Motor Lines, Inc. are all corporations engaged in intrastate transportation in North Carolina holding certificates of public convenience and necessity from the Utilities Commission, and all of said protestants have operating authority which covers some portion or all of the operating authority sought to be transferred in this application from Tennessee Carolina to Metro.

4. That the operating authority sought to be transferred in this proceeding is all of the intrastate operating authority of the transferor, Tennessee Carolina, and consists of radial authority to transport general commodities in an area of the State from Charlotte to 53 named counties, covering the principal Piedmont and Western counties and many Eastern counties, and including therein the major cities of North Carolina, including Charlotte, Salisbury, Greensboro, Winston-Salem, Asheville, Hickory, Gastonia, Burlington, Durham, Laurinburg, Fayetteville, Raleigh, Wilson, Morehead City, and Wilmington.

5. That in addition to its North Carolina intrastate operating authority, the applicant transferor holds authority from the Interstate Commerce Commission to transport various commodities in interstate transportation between North Carolina and other states.

6. For many years, the applicant, Tennessee Carolina, has engaged in extensive interstate trucking operations between North Carolina and points outside North Carolina, with 67 trucks dispatched from its interstate points in North Carolina to points outside of the State of North Carolina.

7. Tennessee Carolina has not utilized its intrastate authority for independent intrastate operations at any time covered by the testimony in this proceeding. Tennessee Carolina does not publish any intrastate points on its point list, for intrastate movement; the only points shown in its point list in the State of North Carolina are shown for interstate transportation; Tennessee Carolina does not participate in any trade publications in North Carolina and does not publish any brochures or advertisements of intrastate shipments. It advertises only its interstate operating authority and in no place shows that it has intrastate operating authority in its advertisements. In the American Motor Carrier Directory received in evidence the only intrastate service listed for it is in Tennessee.

8. The applicant, Tennessee Carolina, has failed to have on file with the North Carolina Utilities Commission a process agent who is still connected with the company in any way. Its presently listed process agent is Mr. C.J. Dellinger, who was listed with the Commission in 1962, but who left the company in 1963 and has no longer served as a process agent in intrastate commerce.

9. The only shipments which applicant contends were made between points in North Carolina from January 1, 1968, to April 30, 1968, were drop shipments from an interstate movement from Charlotte to Maryville or Knoxville, Tennessee, with the drop-off of portions of the consignment from Ford Motor Company in Charlotte to Matthews Motors, Inc. in Asheville, North Carolina. These shipments were made on interstate bills of lading. The applicant has issued no intrastate bills of lading for shipments between points in North Carolina. There has been no service whatsoever to the remaining 52 counties of the 53 in the Certificate.

10. Applicant, Tennessee Carolina, proposes to continue its operations from Charlotte, North Carolina, in interstate commerce with the same equipment and furnishing the same service which it has always performed, following the transfer of the intrastate operating rights proposed here.

11. The protestants provide ample service in the territory proposed to be transferred in this application. No complaints of service of existing carriers under the existing application has been made or were offered at the hearing. The applicants have offered no evidence of any intrastate shipments except the eight drop shipments in connection with interstate shipments.

Based on the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The approval by the Commission of this proposed sale and transfer is sought under the provisions of the North Carolina Utilities Act of 1963. G.S. 62-111 provides for transfer of Certificates and sets out certain requirements for the approval of such transfers, as follows:

"G.S. 62-111. Transfers of franchises; mergers, consolidations and combinations of public utilities.
(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform

such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5). (1947, c. 1008, s. 22; 1949, c. 1132, s. 20; 1953, c. 1140, s. 3; 1957, c. 1152, s. 10; 1961, c. 472, ss. 6, 7; 1963, c. 1165, s. 1; 1967, c. 1202.)"

The legislative policy is spelled out in G.S. 62-112 as follows:

"G.S. 62-112. Effective date, suspension and revocation of franchises; dormant motor carrier franchises. (c) The failure of a common carrier or contract carrier of passengers or property by motor vehicles to perform any transportation for compensation under the authority of its certificate or permit for a period of 30 consecutive days shall be prima facie evidence that said franchise is dormant and the public convenience and necessity is no longer served by such common carrier certificate or that the needs of a contract shipper are no longer served by such a contract carrier. Upon finding after notice and hearing that no such service has been performed for a period of 30 days the Commission is authorized to find that the franchise is dormant and to cancel the certificate or permit of such common or contract carrier. The Commission in its discretion may give consideration in such finding to other factors affecting the performance of such service, including seasonal requirements of the passengers or commodities authorized to be transported, the efforts of the carrier to make its services known to the public or to its contract shipper, the equipment and other facilities maintained by the carrier for performance of such service, and the means by which such carrier holds itself out to perform such service. A proceeding may be brought under this section by the Commission on its own motion or upon the complaint of any shipper or any other carrier. The franchise of a motor carrier may be cancelled under the provisions of this section in any proceeding to sell or transfer or otherwise change control of said franchise brought under the provisions of G.S. 62-111, upon finding of dormancy as provided in this section. Any motor carrier who has obtained authority to suspend operations under the provisions of G.S. 62-112(b)(5) and the rules of the Utilities Commission issued thereunder shall not be subject to cancellation of its franchise under this section during the time such suspension of operations is authorized. In determining whether such carrier has made reasonable efforts to perform service under said franchise the Commission may in its discretion give consideration to disabilities of the carrier including death of the owner and physical disabilities. (1947, c. 1008, s. 23; 1949, c. 1132, s. 2; 1963, c. 1165, s. 1; 1967, c. 1201.)"

This expression of the intention of the Legislature clearly shows that the Commission is directed to deny approval of transfer or sale of motor carrier certificates which are no longer actively operated by the motor carrier seeking to sell the certificate.

In approving sales and transfers of operating rights, the Commission has long followed the policy of determining whether or not the operating rights are dormant and whether or not such transfers would be in the public interest. The Commission policy in this matter is well set out in its decisions, that under the statute the seller of a certificate is not entitled to sell and transfer the certificate unless it was operating the certificate at the time the sale was asked to be approved. Harvey Transfer to Morgan Trucking Company, Inc. in Docket T-795, 1954 NCUC, page 139.

Upon consideration of the entire case, it appears that Tennessee Carolina was not soliciting intrastate business and was not making use of said rights. The freight moved between points in North Carolina was incidental to an interstate movement and was handled on an interstate bill of lading. From January 5, 1968, to April 19, 1968, the total revenue from these drop shipments to Asheville was $399.29, averaging only $3.84 a day. With a total of 67 tractors operating in North Carolina, the intrastate operation in the opinion of this Commission has been allowed to dwindle to a point where it is dormant and the sale of same should not be approved by this Commission, where there are other operators serving the same territory. Before granting a franchise, the law requires that public convenience and necessity for the service must be shown, and to approve the sale of the franchise rights where the business is no greater than the instant case would be tantamount to granting a franchise where public convenience and necessity has not been shown. In re Hennis Freight Lines, Inc, Sale to W.D. Goldston, 1951 NCUC 278.

The long continued disuse of the applicant's intrastate operating authority as actual intrastate authority between the intrastate points covered is tantamount to abandonment. In re C & S Motor Express to Dickson Transfer Company, 1951 NCUC 265.

The Commission cannot say that the applicant Tennessee Carolina has operated the rights which were granted to it in C-61 at any recent time in such a manner as is contemplated by the statute. Certainly the testimony of the applicant, Tennessee Carolina, itself is conflicting as to whether or not there was any true intrastate operation in the calendar year 1968, and there is no evidence of any operation except between the cities of Charlotte and Asheville. In re M. L. Bryan to Henry Faircloth Transfer, 1958 NCUC, page 300. The franchise has been completely dormant as to the remaining 52 counties in the certificate.

The protests filed in this proceeding by all of the protestants raised the issue of dormancy of the intrastate motor carrier authority proposed to be sold, and the applicants were on notice of the issue of dormancy having been raised. All of the way bills subpoenaed by the protestants show that the only movements between points in North Carolina were drop shipments on interstate bills of lading.

The Commission has given due consideration to the factors set forth in G.S. 62-111 and G.S. 62-112, enacted in 1963 and amended in 1967, and it does not find that the applicants have overcome the intention of the Legislature that dormant motor carrier franchises cannot be sold and transferred in North Carolina. The certificate to transport general commodities does not involve seasonal considerations, and the seller has made no effort to make its intrastate authority known to the public or to any shippers.

The applicant, Tennessee Carolina, has held itself out solely as an interstate carrier between North Carolina and points outside North Carolina, and it will continue to perform this same service when and if the sale of its intrastate certificate should be approved.

In view of the facts as they were made to appear from the evidence, and of the applicable law, the Commission is of the opinion that, within the period of time covered by the evidence presented, Tennessee Carolina has not held itself out for operation of its intrastate authority, has not had any shipments to 52 of the 53 authorized counties, has not secured any shipments in intrastate movement on intrastate bills of lading, and has not advertised that it was offering intrastate service authorized, and the Commission finds therefore that said authority is dormant, and the proposed sale and transfer should be denied.

The Commission is further of the opinion that the provisions of G.S. 62-112(c) clearly authorize the Commission to cancel any franchise which has become dormant and is so found to be dormant in a proceeding for sale and transfer of such franchise. Accordingly, the Commission is of the opinion that the franchise should be cancelled in this proceeding.

Based on the foregoing findings of fact and conclusions, the Commission enters the following

IT IS, THEREFORE, ORDERED that the proposed sale and transfer of the North Carolina intrastate operating rights of Tennessee Carolina Transportation Company, Inc., shown in common carrier Certificate No. C-61, to Metro Express Delivery, Inc., Charlotte, North Carolina, be and the same is hereby disapproved and the sale is denied.

IT IS FURTHER ORDERED that the intrastate operating authority of Tennessee Carolina Transportation, Inc., as set forth in said Certificate C-61, is hereby cancelled under the provisions of G.S. 62-112(c) upon the findings of the Commission herein that said Certificate is dormant.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-71, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Seaboard Coast Line Railroad Company For Authority to Discontinue Its Agency Station at Hobgood, North Carolina	) RECOMMENDED ORDER) GRANTING APPLICATION))

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Tuesday, November 26, 1968, at 10:00 o'clock, a.m.

BEFORE: T. G. Killian, Examiner

APPEARANCES:

For the Applicant:

William W. Taylor, Jr.
Maupin, Taylor & Ellis
Attorneys at Law
33 West Davie Street
Raleigh, North Carolina 27602

J. R. Davis, Attorney at Law
Seaboard Coast Line Railroad Company
3600 West Broad Street
Richmond, Virginia 23230

For the Intervenor:

L. G. Parker, Assistant to General Chairman
Transportation-Communication Employees Union
6710 Wessex Lane
Richmond, Virginia 23226
For: Transportation-Communication Employees Union

KILLIAN, EXAMINER: Seaboard Coast Line Railroad Company (Seaboard), by application filed on August 6, 1968, as amended September 20, 1968, seeks authority to close and discontinue its agency station at Hobgood, North Carolina, and to handle future business from its agency station at Scotland Neck, North Carolina.

Hearing was held at the above captioned time and place after proper notice to the public.

Seaboard was present and represented by counsel. No formal protests were received and no protestants appeared at the hearing.

L.G. Parker, Assistant to General Chairman, Transportation-Communication Employees Union, appeared at

the hearing and was allowed to intervene, but he did not offer any evidence or testimony.

Applicant posted notice of its proposed action pursuant to Rule R1-14 of the Rules of Practice and Procedure.

Upon consideration of the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Applicant is a duly authorized common carrier of persons and property by rail in North Carolina intrastate commerce and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. Hobgood, Halifax County, North Carolina, is located on the line of Seaboard extending from Pender to Kinston, approximately 6.7 rail miles south of Scotland Neck and 12 rail miles north of Tarboro, North Carolina. Hobgood and Scotland Neck are connected by hard surfaced highway (N.C. 125) which parallels Seaboard's line between these two points.

3. Local telephone service is available between Hobgood and Scotland Neck, as both points are on the same exchange of Carolina Telephone and Telegraph Company.

4. Office hours at Hobgood are from 7:00 a.m. to 4:00 p.m., less one hour for lunch from noon to 1:00 p.m., Monday through Friday. The office hours of the proposed governing agency of Scotland Neck are from 8:00 a.m. to 5:00 p.m., with one hour for lunch from noon to 1:00 p.m., Monday through Friday.

5. The railroad agent at Hobgood does not represent the Railway Express Agency in the transportation of that company's express shipments.

6. Applicant's exhibits show that for the calendar year 1967, it received 12 carload shipments at Hobgood with revenues accruing therefrom to Seaboard in the amount of $1,096, and forwarded 22 carload shipments with revenues accruing to it in the amount of $1,877; that for the twelve-month period ending July, 1968, it handled 25 carload shipments at Hobgood, ten carloads being received with revenues accruing to Seaboard in the amount of $1,156, and 15 forwarded with revenues accruing to it therefrom in the amount of $1,952. The average number of carloads handled during the periods covered is about one carload shipment every one and one-half weeks. During the calendar year 1967, it received three less-carload shipments at Hobgood with Seaboard revenues amounting to $13, and forwarded one less-carload shipment with revenues accruing therefrom in the amount of $4. For the twelve-month period ending July, 1968, one less-carload shipment was received at Hobgood with revenues therefrom accruing to Seaboard in the amount of $7,

and no less-than-carload shipments were forwarded from that point.

7. The direct expenses of operating the agency at Hobgood was $8,800.14 for the calendar year 1967, and for the twelve-month period ending July, 1968, was $9,579.68.

8. The direct or out-of-pocket expenses incurred by applicant in the operation of its agency at Hobgood exceed revenues received by the carrier for the transportation of shipments handled at said agency by $5,810.14 for the year 1967, and $6,464.68 for the twelve-month period ended July, 1968.

9. Shippers and receivers of freight, carload and less-carload, would conduct their business with the proposed governing agency station of Scotland Neck in essentially the same manner as they have conducted it in the past with the Hobgood Agency.

CONCLUSIONS

Applicant has borne the statutory burden of proof and has established by the greater weight of evidence that:

(1) The present public convenience and necessity does not require the continued operation of its agency station at Hobgood, North Carolina.

(2) No existing shipper or receiver will be materially inconvenienced or affected by the closing of the agency station at Hobgood.

(3) The public can and will be adequately served if its business at Hobgood is conducted from its agency station at Scotland Neck.

(4) The application should be granted and Seaboard permitted to discontinue the agency station at Hobgood, and to handle future business from its agency station at Scotland Neck.

IT IS, THEREFORE, ORDERED:

1. That the Application in this docket be, and the same is hereby, approved.

2. That Seaboard Coast Line Railroad Company, be, and it hereby is, authorized to discontinue its agency station at Hobgood, North Carolina, and to handle future business from its agency station at Scotland Neck, North Carolina.

3. That Applicant notify this Commission the date it closes its Hobgood Agency station.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-29, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Southern Railway Company) RECOMMENDED ORDER
For Authority to Discontinue Its Agency) GRANTING PETITION
Station at Pine Level, North Carolina)

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Wednesday, February 14, 1968, at 10:00 a.m.

BEFORE: I. H. Hinton, Examiner

APPEARANCES:

For the Applicant:

Henry S. Manning, Jr.
Joyner & Howison
Attorneys at Law
Box 109, Raleigh, North Carolina

For the Commission's Staff:

Edward B. Hipp
Commission Counsel
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

HINTON, EXAMINER: This is a petition by Southern Railway Company (Southern), filed on October 19, 1967, for authority to (a) discontinue its agency station at Pine Level, North Carolina, (b) dismantle and remove the station building and (c) handle future business from its agency station at Selma, North Carolina.

Hearing was held at the above captioned time and place after proper notice to the public.

Southern was present and represented by counsel. No formal protests were received and no protestants appeared at the hearing.

Pursuant to Rule R1-14 Petitioner posted notice of its proposed action.

Upon consideration of the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Petitioner, Southern, is a duly authorized and operating common carrier by rail in intrastate commerce in North Carolina, and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. Pine Level, is located in Johnston County, approximately 1.8 rail miles east of Selma, North Carolina and 5.8 rail miles west of Princeton, North Carolina. Pine Level and Selma are connected by a hard surfaced highway (U.S. 70A) which parallels Southern's rail line between these two points.

3. Local telephone service is available between Pine Level and Selma. Office hours of the Selma agency station are 8:00 a.m. to 5:00 p.m., the same as observed at the Pine Level Agency station to be discontinued.

4. The railroad agent does not represent the Railway Express Agency in the transportation of that company's express shipments.

5. Revenues received for the handling of carload freight at Pine Level declined from $15,730 in the year of 1965, to $8,034 in the year ended August 31, 1967. There were 110 carload shipments handled at Pine Level during the year 1965, 83 received and 27 forwarded; 97 carload shipments were handled during the year 1966, 86 received and 11 forwarded, and 23 carload shipments were received and none forwarded during the period January through August, 1967. Revenues received from less-carload traffic handled at Pine Level were $4 in 1965, $18 in 1966, and $16 for the period January through August, 1967. Only 1 less carload shipment was handled at Pine Level in the year 1965, 4 such shipments in 1966 and one such shipment for the period January through August, 1967.

The direct expenses of operating the agency station at Pine Level was $6,737 in 1965, and $6,315 in the year ended August 31, 1967.

6. Shippers and receivers of freight, carload and less-carload, would conduct their business with the proposed governing agency station of Selma in essentially the same manner as they have conducted it with the Pine Level Agency.

CONCLUSIONS

Petitioner has borne the statutory burden of proof and has established by greater weight of evidence that:

(1) The present public convenience and necessity does not require the continued operation of Petitioner's agency station at Pine Level, North Carolina,

(2) No existing shipper or receiver will be materially inconvenienced or affected by the closing of the agency station at Pine Level,

(3) The public can and will be adequately served if Petitioner's business at Pine Level is conducted from its agency station at Selma,

(4) The petition should be allowed and Southern permitted to discontinue the agency station at Pine Level, to dismantle and remove the present station building, and handle future business from its agency station at Selma.

IT IS, THEREFORE, ORDERED:

1. That the Petition in this docket be, and the same hereby is, approved.

2. That Southern Railway Company, be, and it hereby is, authorized to (a) discontinue its agency station at Pine Level, North Carolina, (b) dismantle and remove the station building and (c) handle future business from its agency station at Selma, North Carolina.

3. That Petitioner notify this Commission the date it closes its Pine Level agency station and the date the present station building is dismantled and removed.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-29, SUB 173

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Petition of Southern Railway Company for Authority to Close its Agency Station at Azalea, N. C., and to Dismantle and Remove the Present Station Building	) ORDER) GRANTING) PETITION)

BY THE COMMISSION: Southern Railway Company (Petitioner) by petition filed with the Commission on February 19, 1968, seeks authority to (a) close its agency station at Azalea, N.C., (b) dismantle and remove the present station building and (c) handle future business from its agency station at Asheville, N.C. Azalea, Buncombe County, is located

approximately 4.6 rail miles west of Swannanoa and 4.9 rail miles east of Asheville, N.C.

Applicant has complied with Rule R|-|4 of the Commission's Rules of Practice and Procedure requiring the posting of notice concerning its proposed action.

Petitioner states that:

(1) The highway connecting the agency at Azalea and the agency at Asheville is U.S. Highway 64-70 and that said paved federal highway is a four-lane highway.

(2) The office hours at its agency proposed to be closed and discontinued are 8:00 a.m. to 5:00 p.m., Monday through Friday, and the office hours of the proposed governing agency at Asheville are twenty-four hours per day, seven days per week.

(3) Communication between its patrons at Azalea and the agency at Asheville will be local telephone service or U.S. Mail.

(4) For the calendar year |966, 2|0 carload shipments were received at Azalea with revenues received therefrom in the amount of $27,|02 and 52 carload shipments were forwarded with revenues in the amount of $8,638 received therefrom; that for the year ending June 30, |967, |50 carload shipments were received with revenue in the amount of $|8,078 received therefrom and 53 carload shipments forwarded with revenues in the amount of $|8,904 received therefrom; that no less-than-carload freight traffic was handled to or from Azalea during the calendar year |966 or during the first six (6) months of |967; that the actual station expenses at Azalea for the year |966 were $8,|33 and for the year ended June 30, |967, the actual station expenses were $8,309.

(5) The ordering of cars would be handled by calling the agency at Asheville instead of calling the agency at Azalea as is presently done.

(6) The physical handling of pickup and delivery of cars would not be affected but would continue to be handled in the same manner as at present.

(7) The consignee or consignor would be notified of arrival of carload shipments or of arrival of empty cars, by Bell Telephone Service.

(8) Public convenience and necessity does not require the continued operation of the agency station at Azalea and the public will be adequately served if the business at Azalea is conducted from the agency station at Asheville, N.C.

In the absence of the filing of protests, this Commission, in the interest of the public, caused an investigation to be

made into and concerning the proposed action of Petitioner. The investigation reveals that parties in the Azalea area that might reasonably be expected to have an interest in the matter have no objection to Petitioner's proposed action.

Upon consideration of the foregoing, the Commission is of the opinion that the petition should be approved.

IT IS THEREFORE ORDERED, That the petition of Southern Railway Company for authority to (a) close its agency station at Azalea, N.C., (b) dismantle and remove the present station building and (c) handle future business from its agency station at Asheville, N.C., be, and the same is hereby, approved.

IT IS FURTHER ORDERED, That Petitioner notify this Commission the date it closes its Azalea agency station and the date the present station building is dismantled and removed.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Southern Railway Company For) ORDER GRANTING
Authority to Discontinue Its Agency Station) PETITION
at Cramerton, North Carolina)

BY THE COMMISSION: Southern Railway Company (Petitioner or Southern), a common carrier by rail of persons and property within the State of North Carolina, by petition filed with this Commission on April 30, 1968, seeks authority to (a) discontinue its agency station at Cramerton, North Carolina, (b) make same a prepay station and (c) handle future business from its agency station at Gastonia, North Carolina.

Protests to the proposed action of Southern not having been received within the time allowed by the Rules of Practice the Commission concluded that it was not necessary to conduct the hearing assigned for July 25, 1968, and to make its determination in the matter on basis of the facts set forth in the petition and the pertinent records available in the Commission files without the holding of a hearing.

Cramerton, Gaston County, is located on the mainline of petitioner, 8.0 rail miles north of Gastonia and 2.3 miles south of Belmont, North Carolina. The distance between Cramerton and Gastonia via paved highway (U.S. 29) is 7.8 miles.

The office hours at the Cramerton agency are from 8:00 a.m., to 5:00 p.m., Monday through Friday. The office hours at the proposed governing agency at Gastonia are 7:00 a.m., to 4:00 o'clock, p.m., Monday through Saturday.

Telephone service is available between Cramerton and Gastonia without toll charge. Passenger trains of petitioner do not stop at Cramerton and there is no mail service to that point via rail.

No change in service is proposed as the patrons of petitioner at Cramerton will continue to receive through the agency at Gastonia the same service they are now receiving. In addition, the facilities at Gastonia are available for service to the public six days a week while the Cramerton agency is open to serve the public Monday through Friday.

Notice of the action proposed by petitioner has been posted on the premises of the Cramerton agency in conformity with Rule R1-14 of the Commission's Rules of Practice.

The exhibits attached to and a part of the petition show that a substantial amount of freight traffic is received at and forwarded from Cramerton. The petition is not grounded on a contention that the Cramerton agency is a deficit operation but rather that petitioner can render the same or a superior service to its patrons at that point through its agency facilities at Gastonia.

In the absence of the filing of protests, the Commission, in the interest of the public, conducted an investigation into and concerning the proposed action of Petitioner. This disclosed that Southern's principal patron at Cramerton believes that the handling of its business through the agency at Gastonia will be an improved arrangement. There appears to be no opposition to petitioner's proposed action from any segment of the shipping and receiving public or from the Town of Cramerton through its officials.

Upon consideration of the foregoing the Commission is of the opinion that the proposed action of petitioner will not adversely affect the public interest and concludes that the petition should be approved.

It is accordingly ordered, That the petition of Southern Railway Company for authority tc close and discontinue its agency station at Cramerton, North Carolina, and to handle future business through its agency station at Gastonia, be, and the same is hereby, approved.

And it is further ordered, That Southern notify the Commission the date its proposed action in this matter is consummated.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Southern Railway Company to Discontinue its Agency Station at Gibsonville, North Carolina	) RECOMMENDED ORDER) GRANTING PETITION)

HEARD: In the Commission Hearing Room, Old State Library Building, Raleigh, N.C., on September 5, 1968, at 10:00 a.m.

BEFORE: Commissioner John W. McDevitt

APPEARANCES:

For the Applicant:

James M. Kimsey
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp, General Counsel
P. O. Box 991, Raleigh, N.C.

Larry G. Ford, Associate General Counsel
P. O. Box 991, Raleigh, N.C.

For the Intervenor:

George A. Goodwyn, Assistant Attorney General
Room 124, Old State Library Building
Raleigh, North Carolina
(For the using and consuming public)

MCDEVITT, HEARING COMMISSIONER: This is a Petition by Southern Railway Company filed on June 17, 1968, for authority to discontinue its agency station at Gibsonville, North Carolina, to dismantle and remove the station building

and to handle business from its agency station at Burlington, North Carolina.

A public hearing was scheduled and held as captioned. The Attorney General intervened on behalf of the using and consuming public. The Hearing Commissioner was advised by the Attorney General that Beverly C. Moore, attorney of record for the Town of Gibsonville, had authorized the Attorney General to advise the Commission that the Town of Gibsonville would not protest this proceedings.

Southern Railway Company was represented by counsel and pursuant to Rule R1-14 properly posted notice of its proposed action.

Based on the testimony of applicant, witnesses, and its exhibits, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. Southern Railway Company is a duly created and existing corporation and common carrier by rail in intrastate and interstate commerce within the State, is subject to the jurisdiction of the North Carolina Utilities Commission, and is properly before the Commission, which has jurisdiction over the subject matter of the Petition and proceedings.

2. Gibsonville is an agency station of Southern Railway, located 6.7 rail miles from Burlington, North Carolina. It is located 6.9 highway miles from Burlington via Highway Nos. 70 and 61. Both of these roads are paved and in good condition.

3. Local telephone service is available between Gibsonville and Burlington and the governing agency for the Gibsonville agency is Burlington.

4. The railroad provides no mail, express, or passenger service at the Gibsonville station and the station is not an office for REA. There have been no less carload shipments for the past two years.

5. The office hours at the Gibsonville agency are from 7 a.m. to 4 p.m. Monday through Friday, and the office hours at the Burlington agency 8 a.m. to 5 p.m. Monday through Saturday.

6. A report by one of the Commission inspectors discloses that he contacted the few shippers involved and found no objection to the closing of this station as long as they could receive the same service from the Burlington station. Testimony by a witness for the petitioner concluded that the shippers in Gibsonville could receive equal service if the station in Gibsonville is closed.

7. During the period for 1966, the agency station produced revenues of $31,374, exceeding actual expenses at the station by $23,019. For the year 1967, the agency produced revenues of $39,879, exceeding actual expenses in the amount of $31,008. For the year ending June 30, 1968, the agency produced revenues in the amount of $20,518 which exceeded expenses by $11,979. The petitioner's witnesses and exhibits show that the ratio of total expenses to revenue in the year 1966 was 83.43% and in the year 1967 it was 74.25%, and the year ending June 30, 1968, it was 99.02%. The ratio of station expenses at Gibsonville, North Carolina, in 1966 was 3.05%, in 1967 2.92%, and in the year ending June 30, 1968, 2.92%.

8. Gibsonville is presently the governing station of a non-agency station in McLeansville, North Carolina, which is located about six and one-half miles from Gibsonville. Closing of the Gibsonville agency will not affect the operation of McLeansville and inconvenience anyone at McLeansville.

9. The handling of existing carload freight traffic, which is limited to occasionally finished cotton products from Cone Mills would not be materially affected by closing the agency station in that the shipper could contact the agent at Burlington by phone and the bill of lading could be sent by mail or either delivered in person.

10. The closing of the station will not cause the agent to lose his job and he will be placed at another agency nearby.

CONCLUSIONS

The facts have shown that Gibsonville is an agency station of Southern Railway and that it is located approximately seven highway miles from Burlington. Anyone in Gibsonville desiring to ship any type of materials has only to call on a local telephone to Burlington and advise the agent at that station. The office hours at the Burlington station will in most events be more accommodating than the office hours in Gibsonville since the station at Burlington will be open on Saturdays, therefore giving six days service rather than five days service. For the period of 1966, there were 122 carload freight shipments, for the year 1967, 154 carload shipments, and for the period ending June 30, 1968, there were 108 carload shipments. There is no passenger service and no REA service.

The test of whether a station shall be closed or not is the public need for the services. In this case, it clearly appears that the public use of the services of Southern Railway in Gibsonville is not such that it cannot just as effectively be handled by the Burlington agency. In fact, all indications are that it can be more effectively handled by the Burlington agency since there are two agents in Burlington. Therefore, it appears that public convenience

and necessity does not require that a separate agency station be maintained at Gibsonville, and it is concluded that the petitioner has borne the burden of proof and has established by the greater weight of the evidence that public convenience and necessity presently does not require the continued operation of an agency station at Gibsonville. The record clearly shows that the closing of the station at Gibsonville will not materially and adversely affect or inconvenience the shipping public.

IT IS, THEREFORE, ORDERED that the Petition in this docket be and the same hereby is approved and petitioner is hereby authorized to close and discontinue its agency at Gibsonville, North Carolina, to dismantle and remove the station building, and to handle business from its agency station at Burlington, North Carolina.

IT IS FURTHER ORDERED that the petitioner notify this Commission the date it closes its Gibsonville station and the present station building is dismantled and removed.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-66, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Railroads Operating in the State of North Carolina for Authority to Make Certain Increases in Inter- and Intraterminal and Intraplant Switching Charges on North Carolina Intrastate Traffic	)	ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on January 23, 24, 25, and 26, 1968, and February 1 and 2, 1968

BEFORE: Chairman Harry T. Westcott (Presiding), and Commissioners Clawson L. Williams, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Petitioners:

W. T. Joyner, Jr.
Joyner & Howison
Attorneys at Law

Wachovia Bank Building
Raleigh, North Carolina
For: Southern Railway Company
Carolina and Northwestern Railway Company
North Carolina Railroads Generally

R. N. Simms, Jr.
Simms & Simms
Attorneys at Law
P. O. Box 2776, Raleigh, North Carolina
For: Norfolk Southern Railway Company

Frank W. Bullock, Jr.
Maupin, Taylor & Ellis
Attorneys at Law
P. O. Box 829, Raleigh, North Carolina
For: Seaboard Coast Line Railroad Company

Henry J. Karison
Commerce Counsel
Southern Railway Company
P. O. Box 1808, Washington, D. C.
For: Southern Railway Company
Carolina and Northwestern Railway Company

Carl B. Sterzing, Jr.
General Attorney
Norfolk and Western Railway Company
8 North Jefferson Street
Roanoke, Virginia
For: Norfolk and Western Railway Company

Charles B. Evans
General Attorney
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida
For: Seaboard Coast Line Railroad Company

For the Protestants:

F. Kent Burns
Boyce, Lake & Burns
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina
For: The Borden Chemical Company
Smith-Douglas Division
F. S. Royster Guano Company
W. R. Grace Company
Wilmington Fertilizer Company
Carolina Nitrogen Corporation
Armour Agricultural Chemical Company
Swift and Company
Pearsall and Company
Mobil Chemical Company
Division of Mobil Oil Corporation

I. Beverly Lake, Jr.
Boyce, Lake & Burns
Attorneys at Law
800 Capital Club Building
Raleigh, North Carolina
For: The Borden Chemical Company
Smith-Douglas Division
F. S. Royster Guano Company
W. R. Grace Company
Wilmington Fertilizer Company
Carolina Nitrogen Corporation
Armour Agricultural Chemical Company
Swift and Company
Pearsall and Company
Mobil Chemical Company
Division of Mobil Oil Corporation

Albert W. Kennon
Kennon & Kennon
Attorneys at Law
P. O. Box 3801, Durham, North Carolina
For: Wm. Muirhead Construction Company, Inc.

For the Commission Staff:

Edward B. Hipp
Commission Attorney

For the Using and Consuming Public:

George A. Goodwyn
Assistant Attorney General
Old YMCA Building
Raleigh, North Carolina

BIGGS, COMMISSIONER: This matter arises upon petition filed with the North Carolina Utilities Commission (Commission) by the railroads operating in the State of North Carolina (petitioners) for the authority to make certain increases in the interterminal, intraterminal, intraplant, and certain reciprocal switching charges applicable on North Carolina intrastate rail traffic. The petition was filed on October 16, 1967, and notice of hearing was issued by the Commission on October 25, 1967, setting the matter for hearing in the Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on Tuesday, January 23, 1968, at 10 o'clock a.m.

In response to a motion filed by the petitioners on November 1, 1967, requesting the Commission to declare the scope of the hearing herein, order was issued by the Commission on November 10, 1967, declaring that the matters herein involved do not constitute a general rate case and that the scope of the hearing is confined to issues involving the proposed increases in switching charges.

On December 19, 1967, a petition for leave to intervene in these proceedings was filed on behalf of The Borden Chemical Company, Smith-Douglas Division; F. S. Royster Guano Company; W. R. Grace Company; Wilmington Fertilizer Company; Carolina Nitrogen Corporation; Armour Agricultural Chemical Company; Swift and Company; and Pearsall and Company (Wilmington protestants), which request was granted by order of the Commission issued on January 3, 1968.

On January 8, 1968, intervention in these proceedings was made by the Attorney General of North Carolina, acting under G.S. 62-20, on behalf of the using and consuming public in general and for the North Carolina Department of Agriculture specifically.

On January 11, 1968, petition for leave to intervene and protest was filed on behalf of Wm. Muirhead Construction Company, Inc. (Muirhead), which request was granted by order of the Commission issued on January 15, 1968.

On January 23, 1968, the matter came on for hearing at the time and place designated in the notice, at which hearing appearances were made as shown in the caption. The hearing lasted for six days, during which time evidence consisting of the testimony of witnesses and certain exhibits and documents was presented.

PETITIONERS' EVIDENCE

The petitioner railroads presented the testimony of six witnesses and 33 documentary exhibits, which tended to show the following:

1. That the railroads operating in North Carolina herein seek to increase their charges for interterminal, intraterminal, and reciprocal non-absorbed switching, as those terms are hereinafter defined, by adding $7.50 to the per car charges now assessed and by adding to the sum of the present charges and such amount an additional charge of 10 percent; and that said railroads herein seek to increase their per car charges for intraplant switching by adding $3 per car to the present charges and by adding to the sum of the present charges and $3 an additional 10 percent.

2. That the switching operations of the railroads operating in North Carolina may be divided into the following categories: line haul switching, cross town switching, and intraplant switching; that the term "line haul switching" refers to switching that is incident to the movement of freight cars over the road between tariff points; that the term "cross town switching" refers to the movement of freight cars between points within a switching area and includes interterminal switches and intraterminal switches; that the term "intraplant switching" refers to the movement of freight cars from one point to another within a single plant premises.

3. That "line haul switches" are divided into two classes: regular line haul switches and reciprocal line haul switches; that "regular line haul switches" are those switches made by the railroad making the line haul and involve the movement of a car at origin and destination to and from its loading and unloading points; that "reciprocal line haul switches" refer to the movement of cars at origin and destination to the points of loading and unloading by a railroad which does not perform the line haul movement but which serves the track adjacent to the loading or unloading points and which receives the car from the carrier performing the line haul movement for placement in switching service; that for purposes of ratemaking there are two types of reciprocal line haul switches: reciprocal absorbed line haul switches and reciprocal non-absorbed line haul switches; that "reciprocal absorbed line haul switches" are those reciprocal switches the cost of which, for competitive reasons, is borne by the railroad making the line haul (Illustration: Both Railroad A and Railroad B can handle a certain intrastate shipment. The unloading point is on a siding served by Railroad B. Where the movement is made by Railroad A, the cost of the reciprocal switch performed by Railroad B at destination is absorbed by Railroad A since Railroad B could have performed the movement without a separate switching charge); that "reciprocal non-absorbed line haul switches" are those reciprocal switches the cost of which is assessed against the shipper or consignee, there being no competitive situation that would require the line haul carrier to absorb the switching charge for competitive reasons.

4. That "cross town switching" consists of interterminal switches and intraterminal switches; that "interterminal switching" refers to the movement of cars from one location in a terminal area to another location in the same terminal area where the movement is performed by two or more railroads; and that "intraterminal switching" refers to the movement of railroad cars from one place in a terminal area to another place in the terminal area where the switching is performed by the same railroad.

5. That the petitioning railroads have sought increases in said switching charges in North Carolina on previous occasions but such increases were denied for the reason, among others, that the cost studies employed in arriving at switching costs were not sufficiently reliable as to afford a justification for increasing said switching charges; that as pointed out in order entered in Docket No. R-66, Sub 41, the studies underlying the last request for such increase involved "the use of the total expenses and total switch engine hours of the four principal Class I railroads operating in North Carolina for their total operations in 11 states as reported by them to ICC" and that said studies determined "costs of operation in North Carolina on the basis of these total operating figures without any effort to confine the cost to the overall operations in North Carolina"; and that since the entry of said order the

petitioners have made a further study of the switching operations in North Carolina that was designed to eliminate the deficiencies in the studies last presented.

6. That said further switching study covered switching operations for the year 1966 and included a switch engine time study designed to develop "time standards" for railroad switching movements; that said switch engine time study included a time and motion study of switch engine operations at seven rail terminals in the State (Asheville, Charlotte, Durham, Lenoir, Plymouth, Raleigh, Wilson, Winston-Salem, and Wilmington), which terminals were considered as representative of the State's rail yards from the standpoint of geography, population, and industrial makeup; that the time standards developed by said study were applied to the various switching movements involved in each type of switching at each study location, with a resultant time average being developed for the various movements involved in each type of switching operation (such as car classification, car transfer, and car movement to and from industry sidings); that the time standards thus developed were then applied to a sample of switching freight bills for the year 1966 selected in accordance with a random scientific sample technique designed to produce a "confidence level" of 99 percent, said traffic sample having been so selected that 10 percent of the total of each type of switching for 1966, or 35 movements, whatever was greater, was considered; that the result of the application of said time standards to said switching bills was the development of a weighted time average for each type of switching at each of the study locations; that the switching study further included a determination of the operating expenses incurred for North Carolina yard switching for each of the railroads participating in the study, said North Carolina yard switching expenses being developed by an allocation of such expenses on a direct basis where possible and on an apportionment basis otherwise, with there being added a 6 percent return factor on the net investment in North Carolina allocable to yard switching and an allowance for Federal income tax on such return; that the 1966 expenses thus developed were trended to reflect current values; that the switching study further developed the switch engine cost per minute for each railroad by dividing the total operating expenses allocable to freight car switching in North Carolina, as thus determined, by the total time involved in switch engine operation, which was calculated by dividing the total North Carolina switch engine miles by six (the assumed average speed of a switch engine being six miles per hour) in order to get the total hours and by multiplying the result by 60 to get the total hours and by multiplying the result by 60 to get the total minutes; that the time standards for each type of switching, as developed in the switch engine time studies, were applied to said switch engine cost per minute calculations, and a total switch engine operating cost for each type of switching operation was calculated at each of the study points; that to the switch engine operating costs calculated

as aforesaid, was added the cost of ownership of the freight cars involved in these switching operations, said car costs having been based upon the per diem charge specified in the Association of American Railroads Multi-Level Daily Per Diem Rates where the cars are not over 30 years old and on the basis of annual maintenance costs where "on line cars" were over 30 years old; that the cost of total switch engine operations and car costs were added to produce a total cost for each switching operation at each location; that the costs developed by said study were applied to the other switching locations in North Carolina not included in the study after averaging the costs at locations similar in population to the location not studied to which said average cost was applied; that the total switching costs for each railroad was thereby developed and compared with total revenue.

7. That in connection with reciprocal line haul switches, whether the costs be absorbed or not, the railroad making the reciprocal switch receives a per diem reclaim from the line haul carrier because of the "free time" allowance made in line haul movements for loading and unloading; that after expiration of the "free time" allowed for loading and unloading demurrage is assessed as a penalty for holding the car over; that no allowances were made or credit given by the petitioners for said per diem reclaim in calculating the costs of reciprocal non-absorbed line haul switches, the total cost of car ownership having been weighted into the claimed costs for such type of switching.

8. That each of the petitioning railroads participating in the switching study made its switch engine time studies and freight car traffic sample according to a uniform procedure developed by a committee comprised of representatives of several railroads; that calculations of expenses incurred in connection with North Carolina switching operations and the total miles operated by North Carolina switch engines were developed by each of the railroads separately and in accordance with such method as their books and records would best permit, the methods used having been fully described and explored in the testimony.

9. That the switching studies conducted by the petitioners, as aforesaid, showed that the costs incident to the various types of switching at the various switching locations in the study exceed the revenue derived from such switching in every case, both as to total revenue effect and as to the revenue effect of handling each car in each switching classification.

10. That the proposed rates, if allowed, would not be sufficient to cover the costs incurred in performing the switching in question.

PROTESTANTS' EVIDENCE

The protestants, Muirhead and Wilmington protestants, presented certain testimony, maps, photographs, and documentary evidence tending to show the following:

1. That Muirhead's plant in the City of Durham is served by the Norfolk and Western Railway; that Muirhead receives certain rail shipments of stone and sand in connection with which it is required to pay certain reciprocal non-absorbed switching charges; that in 1966 Muirhead paid such switching charges on 1,385 incoming cars and 768 outbound cars, and in 1967 it paid such switching charges on 1,650 incoming cars and 730 outbound cars; that the total switching charges thus paid in 1967 were $16,219.50 which, under the increases herein sought, would be increased to $28,594.50, or 76.2 percent; that practically all the Muirhead shipments involved multiple car movements of ten or more cars, but that the switching charge per car in such case was the same as if each car had been switched separately; that the switching performed by the N&W Railway in Durham is a simple, short-distance operation performed with one or two locomotive units from a N&W train that comes into Durham during the night.

2. That at or near Wilmington, North Carolina, the Wilmington protestants have certain manufacturing facilities that are now served by the Seaboard Coast Line Railroad; that the manufacturing processes of said protestants involve a sale and purchase of materials from each other and from other Wilmington based suppliers; that the materials thus bought and sold are transported between the plants of the Wilmington protestants and the other suppliers by rail on the basis of the railroad's intraterminal switching tariff; that prior to the merger of the Atlantic Coast Line and Seaboard Air Line Railroads, a portion of said switching movements involved an interchange of cars between the two railroads; that the materials transported between said plants via intraterminal switch are bulk commodities such as superphosphate, potash, anhydrous ammonia, sulphuric acid, and nitrogen solutions and are transported in tank cars and box cars; that the tank cars involved in such movement are privately owned for the most part and the railroad incurs no cost of ownership in connection with said cars; that many of the other cars used in the movement of such commodities are older, less serviceable cars; that in many instances a car loaded with raw material will move via intraterminal switch to a plant, be unloaded, and be reloaded with a finished product ready for line haul to a customer out of the area; that the utilization of freight cars in such manner saves the railroad at least two switching movements - the pulling of the empty car after unloading and the placement of an empty car for loading; that many of the intraterminal switching movements between plants are multiple car movements, although the switching charge assessed is the same for each car as if it were individually switched; that because of the unusual circumstances under which freight

cars are moved via intraterminal switching in the Wilmington area, including the inefficiency factor that was involved in separate operations by SAL and ACL prior to merger, special rates were approved by the Commission several years ago for such switching that were higher than those that prevailed at other switching locations in North Carolina; that the special circumstances which existed at said time were eliminated at least in part by the merger of SAL and ACL, and the costs incident to switching in the Wilmington area are now no greater than that experienced at other locations (indeed, the petitioners' own evidence tends to show that such costs are somewhat less).

STIPULATION BETWEEN PETITIONERS AND MUIRHEAD

During the course of the proceedings, the following stipulation was dictated into the record:

> "'It is stipulated by counsel for the petitioning railroads and counsel for the Wm. Muirhead Construction Company, Inc., that for the purpose of this case the factual situation involving reciprocal non-absorbed line haul switching by Norfolk and Western Railway at Durham, N. C., is a special situation and that it is further stipulated that the Muirhead Construction Company can withdraw its protest and that the Commission can enter an order dismissing this proceeding as to the N&W Railway reciprocal non-absorbed line haul switching at Durham, N. C.'" (rp 172)

Said stipulation was interpreted to mean that Muirhead and the petitioners were thereby agreeing that the railroads were no longer requesting an increase of reciprocal non-absorbed switching charges to Muirhead and that the switching charges now applicable would continue to be applied to Muirhead. (rp 175) This stipulation was also joined in by counsel for the Wilmington protestants. (rp 177) The Commission Staff and the Attorney General offered no objection to said stipulation but did not join therein. (rp 180) The explanation given as to the special circumstances at Durham and as reason for entering upon such stipulation was that the switching for Muirhead at Durham involved a large number of cars handled at one time in a short, simple switching operation. (rp 182)

STAFF's EVIDENCE

The Commission's Staff presented testimony and exhibits showing the present switching charges which are sought to be increased by the petitioners in this proceeding. Said evidence tended to show that the present charges for intraplant, intraterminal, and interterminal are largely uniform among the various carriers throughout the State, the most significant variations being the intraplant switching charge of the N&W Railway in the amount of $19.18 (as compared to the predominant charge of $9.50 by other railroads) and the intraterminal switching charge of

Seaboard Coast Line Railroad at Wilmington in the amount of $20.14 (as compared to the predominant charge of $15.35). The schedule of rates for intraplant switching by the N&W Railway also shows rates of $9.50 or less for such switching at Durham and Winston-Salem.

FINDINGS OF FACT

Based upon the evidence adduced at the hearing, the Commission makes the following findings of fact:

1. That the petitioning railroads are engaged in the intrastate transportation of property in North Carolina and in connection with said transportation perform certain rail switching services for which charges are made pursuant to tariffs on file with the Commission; that as such carriers said petitioning railroads and their charges for switching services performed incident to the intrastate transportation of property are subject to the jurisdiction of the Commission; that the petitioning railroads are further identified and described in Appendix A attached to the petition filed herein, as follows:

Aberdeen & Rockfish Railroad Company
Alexander Railroad Company
Atlantic and East Carolina Railway Company
Atlantic and Western Railway Company
Beaufort and Morehead Railroad Company
(A. T. Leary, Lessee)
Cape Fear Railways, Inc.
Carolina and Northwestern Railway Company
Carolina, Clinchfield and Ohio Railway, Lessees:
Seaboard Coast Line Railroad Company
Louisville and Nashville Railroad Company
Cliffside Railroad Company
Durham and Southern Railway Company
Graham County Railroad Company
High Point, Thomasville & Denton Railroad Company
Laurinburg and Southern Railroad Company
Louisville and Nashville Railroad Company
Norfolk and Western Railway Company
Norfolk, Franklin and Danville Railway Company
Norfolk Southern Railway Company
Piedmont and Northern Railway Company
Rockingham Railroad Company (SCL)
Seaboard Coast Line Railroad Company
Southern Railway Company
State University Railroad Company
Virginia and Carolina Southern Railroad Company (SCL)
Warrenton Rail Road Company
Winston-Salem Southbound Railway Company
Yancey Railroad Company

2. That the petitioning railroads filed petition with the Commission on October 16, 1967, wherein they seek to increase their charges for switching services performed in

connection with the intrastate transportation of property as follows:

a. By increasing the per car charge for interterminal, intraterminal, and reciprocal non-absorbed switching by adding $7.50 to the per car charge now assessed and by adding to the sum of the present charge and such amount an additional charge of 10 percent.

b. By increasing the charge for intraplant switching by adding $3 per car to the present charge and by adding to the sum of the present charge and $3 an additional 10 percent.

3. That "interterminal switching", for which increased charges are proposed, refers to the movement of cars from one location to another within a terminal area by two or more railroads; that "intraterminal switching", for which increased charges are sought herein, refers to the movement of railroad cars from one place to another within a terminal area by the same railroad; that "reciprocal non-absorbed switching", for which increased charges are sought herein, refers to the movement of freight cars from point of loading or unloading to the exchange track from whence the car is involved in a line haul movement, where, by reasons of competition, the line haul carrier does not absorb the cost of having the car switched to the origin or destination siding served by another railroad; that "intraplant switching" refers to the movement of a car from one place to another within a plant premises by one railroad.

4. That preparatory to the filing of its petition in this cause, the petitioning railroads conducted an extensive switching study which was designed to establish: (1) the per minute costs of the railroads participating in the study of operating a switch engine in North Carolina; (2) the weighted time averages for the various movements involved in the types of switching herein involved, which in turn produced the average total switch engine time for each of the types of switching involved herein; (3) the cost of car ownership incident to each type of switching; (4) by addition of switch engine costs and car ownership costs, the average total cost of each type of switching at the various locations included in the study, which costs were applied to the locations not included in the study on a population comparison basis.

5. That the calculations made by the petitioning railroads in their said studies did not allow a credit for the per diem reclaim paid by the line haul carrier to the switching railroad in connection with reciprocal non-absorbed switching on account of the "free time" allowance for loading and unloading; and that the calculations made by the petitioning railroads in said studies did not make an allowance for the privately owned cars (for which the railroads incurred no cost of ownership expense) used in

some of the switching operations at Wilmington, North Carolina.

6. That the studies made by the petitioning railroads did allocate the expenses incident to the switching operations for which increased charges are sought as between North Carolina intrastate operations and interstate operations, the expenses having been allocated on a direct basis where possible and on an apportionment basis otherwise with the proportional allocations having been made in accordance with the method that the books and records of the particular railroads would best accommodate; that, at the request of the Commission made during the hearing, the petitioners also made an allocation of expenses on the basis of the mileage pertaining to the intrastate switching herein involved to the total mileage for all North Carolina switching.

7. That the total effect of the switching studies made by the petitioning railroads with respect to their North Carolina switching operations, both with respect to the allocation of expense as submitted by the railroads in their direct presentation and with respect to the allocations based on mileage requested by the Commission, showed that each of the railroads participating in the study is losing substantial sums of money on said switching operations, the amount of such losses being less by application of expenses on a mileage basis than by the allocation otherwise submitted by the petitioners.

8. That the switching studies made by the petitioners show that the per car costs for making such switches vary from place to place, in some instances rather widely even within a switching classification, but that in all classes of switching and at all locations the railroads sustained substantial losses under the present switching rates. Indeed, according to the cost calculations of petitioners, the increased rates would still be insufficient to cover switching costs except for intraterminal switches by the Southern Railway at Raleigh where a profit of $5.59 per car is shown and interterminal switches (originating) by the Southern Railway at Winston-Salem where $2.18 profit is shown.

9. That the costs of performing switching operations at Wilmington, North Carolina, are no greater than such costs at other locations, and the special circumstances and justifications which heretofore existed for higher charges being imposed at such locations for switching no longer exist.

10. That the stipulation between Muirhead and the petitioning railroads for the present switching charges pertaining to the switching of cars to and from the Muirhead plant in Durham, North Carolina, to remain in effect notwithstanding that the increases herein sought may be granted, is fair and reasonable considering the special

circumstances under which freight cars are moved to and from the Muirhead siding, i.e., involve the short and simple movement of ten or more cars at one time.

11. That the present switching charges for intraplant, intraterminal, and interterminal switching are relatively uniform throughout the State among the various petitioning railroads, except for the intraterminal switching charges at Wilmington already mentioned which are higher than at other locations. However, the charges made at present for reciprocal switching have some rather substantial variations. The most predominant charge made in North Carolina for the reciprocal non-absorbed switching is $5.95; however, to mention some of the wider variances, the per car charge at Fayetteville is $20.97, at Goldsboro is $14.85, at Kinston and New Bern is $13.95, at Rockingham is $16.80, and at Wilson is $14.85. The evidence presented in this matter offers no explanation as to why such rate variations exist, but the switching studies made by petitioners do not reveal any substantial difference in the costs of performing such switching service at the locations studied.

CONCLUSIONS

Having carefully considered the evidence presented by the petitioners and protestants and having made findings of fact based thereon, the Commission concludes as follows:

1. That the switching studies conducted by the petitioners satisfactorily determined the total costs of the switching operations in North Carolina of each of the petitioning railroads that participated in the study and of the per car costs of said railroads in performing the various switching operations involved in these proceedings.

2. That the present switching revenues derived by the petitioners from the switching in question are not sufficient to cover the cost of performing said switching services, either with respect to the total switching costs or the per car switching costs.

3. That special circumstances at some switching locations have caused certain variations in switching charges to arise in connection with intraplant and intraterminal switching, such variations usually involving the imposition of less than standard charges on account of the simplicity of the movement or the fact that repeated multiple car movements are involved. The stipulation between counsel for the petitioner and the protestant, Wm. Muirhead Construction Company, Inc., specifies that a special circumstance exists with respect to the Muirhead switching that will justify a continuation of the present charge without increase, which stipulation the Commission concludes to be fair and reasonable and not burdensome upon the remaining switching charges.

4. That with respect to reciprocal non-absorbed switching charges, the present schedule of rates includes some charges which are considerably higher than the standard charge, examples of which are cited in Findings of Fact No. 11. The evidence gives no explanation of these rate variations, and the economic studies made by the petitioners do not indicate any material differences in the costs of performing switching services at the locations where the rates are substantially higher, using the petitioners' method of applying costs at studied locations to locations not studied on a population comparison basis. It is concluded, therefore, that such wide variations should not be made even wider by the allowance of increases as to all of such rates but that the higher rates should either remain the same as the present or should be increased only to the level that the standard rate is increased.

5. That although no credit is given for per diem reclaim in calculating the total costs of reciprocal non-absorbed switching, the Commission concludes that such reclaim would relate only to the cost of car ownership and that the total switch engine handling costs for such switching being substantially greater than the revenues realized from such switching even after allowing the increases herein sought, the increased charges for such switching are justified, subject to the limitation set forth in the foregoing conclusion with respect to the wide variation in charges.

6. That the costs of performing intraterminal switching at Wilmington, North Carolina, are no greater than that incurred at other switching locations and that the charges to be assessed for such switching should be the same as for performing similar switching service at other locations in the State. By allowing the increases herein sought, this would result in some increase in the per car charge for intraterminal switching at Wilmington but the increased charge would be no greater than that assessed at other locations.

7. That the increases herein sought to be applied by the petitioners are considered to be fair and reasonable and should be allowed, subject to the limitations hereinabove mentioned with respect to the substantially higher charges presently assessed for reciprocal non-absorbed switching and to the intraterminal switching charges at Wilmington, North Carolina.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the petitioners be and they are hereby authorized to file rate tariffs with the Commission prescribing the following schedule of rates for switching services performed incident to the intrastate transportation of property in North Carolina:

(a) With respect to intraplant switching, a rate equal to the present per car charge, plus $3, plus an amount equal to 10 percent of the sum of the present charge and $3.

(b) With respect to intraterminal switching other than at Wilmington, North Carolina, a rate equal to the present per car charge, plus $7.50, plus an amount equal to 10 percent of the sum of the present charge and $7.50.

(c) With respect to the intraterminal switching at Wilmington, North Carolina, a rate of $25.14, which is equivalent to the present standard rate of $15.35, plus $7.50, plus an amount equal to 10 percent of the sum of the present rate and $7.50.

(d) With respect to the interterminal switching, a rate equal to the present per car charge, plus $7.50, plus an amount equal to 10 percent of the sum of the present charge and $7.50.

(e) With respect to reciprocal non-absorbed switching, a rate equal to the greater of the following amounts: The sum of $14.80 or a sum equal to the present per car charge.

(f) With respect to the reciprocal non-absorbed switching charges applicable to Wm. Muirhead Construction Company, Inc., Durham, North Carolina, a rate equal to the present per car charge.

Said tariffs shall be filed in accordance with the rules and regulations of the Commission and shall become effective upon one day's notice.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-66, SUB 52

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed)
Minimum Transit Charge of $22.00 Per Car) ORDER
Effective November 10, 16, 20 and 28, 1967)

HEARD IN: Raleigh, North Carolina, on August 6, 1968

BEFORE: Chairman Harry T. Westcott (Presiding), Commissioners Thomas R. Eller, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Respondents:

James L. Tapley
Southern Railway System
P. O. Box 1808, Washington, D. C. 20013
For: Southern Railway System

Albert B. Russ, Jr.
Seaboard Coast Line Railroad Company
3600 West Broad Street
Richmond, Virginia 23230
For: Seaboard Coast Line Railroad Company in particular and Rail Respondents in general

For the Protestants:

Harold H. Smith
Attorney at Law
P. O. Box 830, Concord, North Carolina 28025
For: Cannon Mills Company
P. O. Box 107
Kannapolis, North Carolina 28081

L. O. Kimberly, Jr.
North Carolina Textile Manufacturers Association
22 Marietta Street
Atlanta, Georgia 30303
For: North Carolina Textile Manufacturers Association

For the Commission's Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

ELLER, COMMISSIONER: This investigation began following the filing of tariff schedules for Respondent rail carriers proposing establishment of a minimum transit charge of $22.00 per car on shipments in intrastate commerce within the State under transit privileges already practiced.

The Commission suspended the effectiveness of the proposed minimum transit charge, instituted an investigation to determine the lawfulness thereof, and assigned the matter for hearing. All participating rail carriers were made respondents with the burden of proof pursuant to G.S. 62-75 and G.S. 62-134.

The carriers on their petition were allowed to cancel and withdraw the suspended schedules insofar as applicable on carload shipments of grain, grain products, feed and flour.

Hearings were held with the parties and counsel present as captioned.

Based upon evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. Respondents are common carriers by rail in the State of North Carolina and are subject to the jurisdiction of and properly before the Commission, which has jurisdiction over the subject matter of the proceedings.

2. With the exception of cotton and molasses, the commodities on which Respondents propose to apply a minimum charge are now subject to transit charges and the effect of proposed minimum transit charge on their movement and associated revenues would be minimal.

3. Combinations of non-transit local rates generally produce rates on cotton in bales that are lower than the through rates, which are subject to the minimum transit charge proposed.

4. The evidence does not reveal North Carolina intrastate rail transit movements of cotton for the year 1967. The intrastate movement of cotton, in bales, by rail between points and places within the State is negligible.

5. The cost of providing service incident to the granting of transit exceeds the proposed minimum charge of $22.00 per car.

6. The filing under consideration will have its primary effect in interstate commerce and is made in this State by Respondents primarily for administrative uniformity.

CONCLUSIONS

In consideration of the record and the facts found, we conclude that the Respondents have shown that a minimum transit charge is appropriate and that it would be just and reasonable to fix the minimum charge at $22.00. The suspended tariffs should be allowed to become effective.

Accordingly, IT IS ORDERED:

1. That the Order of Suspension dated November 7, 1967, be, and the same is hereby, vacated and set aside for the purpose of allowing the proposed minimum transit charge of $22.00 per car to become effective.

2. The investigation in this matter is discontinued and these proceedings are dismissed.

3. All parties and counsel to this proceeding shall be furnished a copy of this Order by regular mail.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-66, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Southern Freight Association, Agent, Atlanta, Ga., for Relief from the Terms of the Tariff Rules and from Provisions of the Long and Short Haul Law - General Statute 62-141	ORDER GRANTING APPLICATION

BY THE COMMISSION: Southern Freight Association, Agent, Atlanta, Ga., by W. E. Block, its Tariff Publishing Officer, in its Application No. S-292, filed with this Commission on February 12, 1968, seeks relief from the provisions of the Long and Short Haul Law, G.S. 62-141, that will permit the publication and maintenance of a rate of 26 1/2 cents per 100 pounds, subject to Tariff of Increased Rates and Charges X-256, for application on shipments of dimethyl terephthalate (DMT) in bulk, in tote bins, in unit container cars, minimum weight 130,000 pounds, originating at Hanover, consigned to Graingers, North Carolina, when moving via Seaboard Coast Line Railroad (SCL) direct and to simultaneously maintain for application on like traffic moving from Hanover to the directly intermediate point of Rocky Mount, North Carolina, a rate of 28 1/2 cents per 100 pounds, subject to Tariff of Increased Rates and Charges X-256.

The origin and both destinations are local stations on the Seaboard Coast Line Railroad. The only route available to Rocky Mount is via SCL direct and applicant maintains that said route is the only proper route from Hanover to Graingers, North Carolina.

The actual distances via SCL direct to Rocky Mount and Graingers are 131 and 199 miles, respectively. Hanover is grouped with Wilmington, N. C., and Graingers is grouped with Kinston, N. C. Rocky Mount is a base point. The rate making distances (class rate mileages) are 124 to Rocky Mount and 110 to Graingers. The distance to Rocky Mount is made via SCL direct, while to Graingers (Kinston) it is made via SCL Goldsboro, North Carolina, Atlantic and East Carolina Railway beyond.

The rates hereinbefore mentioned reflect the established basis, or the basis that is now observed in publishing rates on dimethyl terephthalate, in bulk, in tote bins, in unit container cars, minimum weight 30,000 pounds, for application between points in Southern Territory. Applicant does not wish to depart from the established basis but in absence of the relief sought it would be necessary to either reduce the rate to Rocky Mount to be no higher than proposed to Graingers or to increase the rate to the latter point to be not less than has been published to Rocky Mount, N. C. Relief from the provisions of G.S. 62-141 is therefore sought, as Applicant maintains that its principal (SCL) does not wish to favor the receiver at Rocky Mount or discriminate against the receivers at Graingers and other Southern points.

The rate to Rocky Mount, as hereinbefore mentioned, has been published and is scheduled to become effective March 15, 1968. In addition to the relief sought from the provisions of G.S. 62-141, Applicant also seeks relief from the terms of the Commission's Tariff Publication Rules that will permit publication of the proposed rate to Graingers, North Carolina, effective March 15, 1968, on less-than-statutory notice.

Upon consideration of the matter, including the justification offered for the relief sought, and good cause appearing,

It is ordered, That the relief sought from the long and short haul provisions of G.S. 62-141, be, and same is hereby, granted.

It is further ordered, That the Applicant herein be, and the same is hereby, authorized to publish from Hanover to Graingers, North Carolina, the rate on dimethyl terephthalate, carload, as hereinbefore named and described, effective March 15, 1968, on one (1) day's notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-66, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Southern Freight Association, Agent, Atlanta, Ga., For Relief from the Provisions of the Long and Short Haul Law - General Statute 62-141	) AMENDED ORDER) GRANTING) FURTHER) RELIEF

BY THE COMMISSION: By Order herein of February 23, 1968, relief was granted from the provisions of G.S. 62-14 that permitted the Seaboard Coast Line Railroad to publish and maintain a rate of 26 1/2 cents per 100 pounds, subject to Tariff of Increased Rates and Charges X-256, for application on single car shipments of dimethyl terephthalate (DMT) in bulk, in tote bins, in unit container cars, minimum weight 130,000 pounds, moving from Hanover to Graingers, North Carolina, via Seaboard Coast Line Railroad (Seaboard or SCL) direct and to simultaneously maintain higher rates on the same description from Hanover to points on the Seaboard intermediate to Graingers.

The Commission now has for consideration Application No. S-299, filed by Southern Freight Association, Agent, Atlanta, Ga., which seeks additional relief from the provisions of G.S. 62-14 that will permit the publication and maintenance by Seaboard of a multiple car rate of 24 cents per 100 pounds from Hanover to Graingers, North Carolina, on dimethyl terephthalate, in bulk, in tote bins, in unit container cars, minimum weight 130,000 pounds per car, subject to an aggregate minimum weight of 390,000 pounds per shipment, shipped in one day from one consignor at one location, at one origin, via one route, to one consignee at one location, on one bill of lading via SCL direct and at the same time to maintain higher rates on the same description from Hanover to points on the direct route of the Seaboard Coast Line Railroad intermediate to Graingers.

Upon consideration of the foregoing, the record in this matter as a whole, and the justification offered for the additional relief now sought and good cause appearing,

It is ordered, That the Order in this docket dated February 23, 1968, be, and same is hereby, amended to authorize the publication and maintenance of a rate on dimethyl terephthalate, in multiple carloads, from Hanover to Graingers, North Carolina, as hereinbefore enumerated and described, for application on shipments moving via SCL direct and at the same time to maintain higher rates on the same commodity description to points on the Seaboard directly intermediate to Graingers.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of September, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-4, SUB 57

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation Into and Concerning the Condition) ORDER
of Norfolk Southern Railway Company Trackage on) REQUIRING
Its Fuquay-Fayetteville Line And On Its Raleigh-) REPAIR OF
Charlotte Line At Mile Posts 240 and 241) TRACKAGE

BY THE COMMISSION: It appearing, That investigations have been made into and concerning the condition of the Norfolk Southern Railway Company (Norfolk Southern) trackage on its Fuquay-Fayetteville line at Rawls, Harnett County, North Carolina, where County Road No. 1415 crosses the Norfolk Southern track and at Mile Posts 240 and 241 on its Raleigh-Charlotte line south of Raleigh.

It further appearing, That north from Mile Post 240 to a crossing with a dirt road there are numerous loose bolts in the rail joints and that photographs illustrating the general unsatisfactory conditions of subject trackage have been made and copies thereof appear in Appendices "A" (Rawls, N.C.) and "B" (Mile Post 241) hereto which identifies the rail, ties and roadbed as appearing in said photographs.

Upon consideration of the foregoing and the provisions of G.S. 62-235, which reads

> "62-235. Commission to inspect railroads as to equipment and facilities, and to require repair - The Commission is empowered and directed, from time to time, to carefully examine into and inspect the conditions of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees; and if any are found by it to be unsafe, it shall on once notify and require the railroad company to put the same in order."

and the Commission being of the opinion that the safety and well being of the public and of the employees of the Norfolk Southern are affected,

It is ordered, That the Norfolk Southern Railway Company, P. O. Box 2210, Raleigh, North Carolina, be, and the same is hereby, directed to promptly repair the specific unsatisfactory conditions now existing on its line of railroad extending from Fuquay to Fayetteville, North Carolina, and from Raleigh to Charlotte, North Carolina, as hereinbefore enumerated and described and more particularly identified in the photographs set forth in Appendices "A" and "B" hereto, and any others of a like or similar character that now exist on said trackage.

It is further ordered, That a copy of this order be served upon Mr. G.W. Teeter, General Superintendent, Norfolk

Southern Railway Company, P. O. Box 2110, Raleigh, North Carolina.

It is further ordered, That the Norfolk Southern Railway Company advise the Commission the date it will begin the repair of involved trackage as required hereby and advise further when the work is completed.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of June 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

NOTE: For Appendices A and B, see official Order in the Office of the Chief Clerk.

DOCKET NO. R-71, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation Into and Concerning The Condition of Seaboard Coast Line Trackage Between Wilmington and Chadbourn, North Carolina	)	ORDER REQUIRING REPAIR OF TRACKAGE

BY THE COMMISSION: It appearing, That a report has been made to this Commission, that the trackage of the Seaboard Coast Line Railroad Company extending from Wilmington to Chadbourn, North Carolina, (54 rail miles) is in poor and hazardous condition.

It further appearing, That an investigation has been made into and concerning the matter, including an inspection of involved trackage, which reveals that its overall condition is poor, that the eleven (11) mile section between Leland and Delco is in the worse condition and in certain places appears hazardous.

It further appearing, That there is a movement of ammunition and other hazardous materials over involved line of railroad and that said trackage serves a number of communities and traverses populated areas.

It further appearing, That photographs illustrating the general unsatisfactory condition of subject trackage have been made and that xerox copies thereof appear in Appendix "A" hereto, which identifies the location of the rail, ties and roadbed, as appearing in said photographs.

Upon consideration of the foregoing and the provisions of G.S. 62-235, which reads:

"62-235. Commission to inspect railroads as to equipment and facilities, and to require repair - The Commission is empowered and directed, from time to time, to carefully examine into and inspect the conditions of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees; and if any are found by it to be unsafe, it shall on once notify and require the railroad company to put the same in order."

and the Commission having concluded that the safety and well being of the public and the employees of the railroad is involved instructed the Seaboard Coast Line Railroad Company by telegram of May 1, 1968, that it was required thereby to repair and upgrade the condition of its trackage extending from Wilmington to Chadbourn, North Carolina, and that an appropriate order covering will issue.

IT IS THEREFORE ORDERED:

(1) That the Seaboard Coast Line Railroad Company, 500 Water Street, Jacksonville, Florida, be, and the same is hereby, directed to promptly repair the specific unsatisfactory conditions now existing on its line of railroad extending from Wilmington to Chadbourn, North Carolina, as hereinbefore enumerated and described, and more particularly identified in the xerox copies of photographs set forth in Appendix "A" hereto, and any others of a like or similar character that now exist on said trackage.

(2) That a copy of this order be served upon Mr. D.C. Hastings, Vice President - Transportation and Maintenance, Seaboard Coast Line Railroad Company, 500 Water Street, Jacksonville, Fla., and upon Mr. M.S. Jones, Superintendent of the Rocky Mount Division of said railroad, Rocky Mount, North Carolina.

(3) That the Seaboard Coast Line Railroad Company advise the Commission the date it will begin the repair of involved trackage as required hereby and advise further when the work is completed.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

NOTE: For Appendix A, see the official Order in the Office of the Chief Clerk.

DOCKET NO. R-22, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Graham County Railroad Company, Investigation of)
Operating Practices and Condition of Equipment and) ORDER
to Show Cause)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on Friday, November 8, 1968

BEFORE: Chairman Harry T. Westcott (Presiding), Commissioners Thomas R. Eller, Jr., John W. McDevitt, Clawson L. Williams, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Respondent:

W. P. Sandridge, Jr.
Womble, Carlyle, Sandridge & Rice
Attorneys at Law
2400 Wachovia Building
Winston-Salem, North Carolina

T. M. Jenkins
Attorney at Law
P. O. Box 547, Robbinsville, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

Larry G. Ford
Commission Attorney
Raleigh, North Carolina

BY THE COMMISSION: This investigation began following a reported derailment on the Graham County Railroad on July 23, 1968, which resulted in personal injuries to passengers being transported in the caboose of a regular freight train operation.

The Commission, upon determining the actuality of the derailment and personal injury to passengers, instituted an investigation into and concerning the operating practices of the Graham County Railroad and into the condition of its equipment, and the railroad was ordered to show cause why it should not be required to cease and desist from transporting passengers in violation of the provisions of G.S. 62-138. The matter was assigned for hearing.

Hearing was held with the parties and counsel present as captioned.

Based upon evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. Respondent is a common carrier by rail in the State of North Carolina and is subject to the jurisdiction of and is properly before the Commission which has jurisdiction over the subject matter of this proceeding.

2. A derailment of a freight train did occur July 23, 1968, on the Graham County Railroad.

3. Derailment was caused by brake failure of undetermined cause.

4. Personal injuries were sustained in the derailment by fare-paying passengers being transported in the caboose of regular freight train operation.

5. Passengers were being transported by Graham County Railroad without a proper passenger tariff of fares or charges being on file with the Commission.

6. Graham County Railroad Company, on March 19, 1966, entered into a contract with Government Services, Inc., under which the Railroad would provide scenic or tourist service over four (4) miles of its trackage in the Nantahala Gorge area of the National Forest.

7. Graham County Railroad Company, on June 10, 1966, with the Commission's approval, entered into an assignment contract by which the Railroad purported to assign, transfer, and convey all its rights, title and interest in the contract mentioned in Finding of Fact No. 6 to a corporation known as Bear Creek Junction, Inc.

CONCLUSIONS

In consideration of the record in this proceeding as a whole and the evidence adduced at the hearing, we conclude that Respondent has been transporting passengers without appropriate tariffs on file with the Commission, in freight train equipment of a regular freight train operation. This action on the part of the respondent not only subjected passengers to the hazards of freight train operation but could, in the event of legal action against the Respondent resulting from an accident such as the one that occasioned this investigation, place a severe limitation on its ability to continue to serve its shippers and receivers of freight which is the very foundation of the railroad's existence.

IT IS THEREFORE ORDERED:

1. That Graham County Railroad Company cease and desist from all passenger transportation except as may be required by the assignment contract of June 10, 1966.

2. That Graham County Railroad Company, under contract or otherwise, cease and desist from the transportation of passengers in or on a caboose while in a freight train operation and in or on a freight car or engine under any circumstances.

3. That Graham County Railroad Company furnish the Commission with copies of all equipment inspection and repair reports as such inspections are made by the Department of Transportation of the Federal Government for a period of two (2) years from the date of this order.

4. That the investigation in this matter is discontinued and the proceedings are dismissed; however, the Commission reserves the right to reopen the proceedings at any time it feels circumstances warrant such action.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 172

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Southern Railway Company for Authority to Consolidate the Operation of Its Passenger Trains No. 15 and No. 21, Westbound, and No. 16 and No. 22, Eastbound, between Greensboro and Asheville, North Carolina	)	ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, January 17, 1968, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

W. T. Joyner, Jr.
Joyner and Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina

Earl E. Eisenhart, Jr.
Attorney at Law
Southern Railway Company
P. O. Box 1808
Washington, D.C. 20013

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

No Protestants.

WESTCOTT, CHAIRMAN: Under date of November 14, 1967, Southern Railway Company, hereinafter referred to as Petitioner, filed with the Commission an application for authority to consolidate the operation of its passenger Trains No. 15 and No. 21, westbound, and No. 16 and No. 22, eastbound, between Greensboro, North Carolina, and Asheville, North Carolina. The matter was set for hearing in the offices of the Commission and was heard on January 17, 1968, at 10:00 a.m.

Subsequent to the filing of the application and prior to the date of hearing, the staff of the Commission, by letter, notified the mayors of each of the towns along the route served by Petitioner's Trains No. 15 and No. 21, westbound, and No. 16 and No. 22, eastbound, of the filing of the application by Petitioner and of the proposed new schedules of the consolidated service.

At present, Train No. 15, the "Asheville Special," which receives the New York-Asheville sleeping car at Greensboro, now leaves Greensboro at 2:00 a.m. and arrives at Asheville at 8:30 a.m. Train No. 21, the "Carolina Special," westbound, receives the New York-Winston-Salem sleeper at Greensboro, leaves Greensboro at 7:30 a.m., arrives at Winston-Salem at 8:20 a.m., and at Asheville at 3:30 p.m. The proposed consolidated Train No. 15-21 would leave Greensboro at 6:40 a.m., arrive Winston-Salem at 7:20 a.m., and at Asheville at 12:45 p.m., handling the New York-Asheville sleeper which would be handled on the "Peach Queen" in lieu of the "Southerner" between Greensboro and New York; and the proposed consolidated Train No. 16-22, eastbound, would operate on Train No. 16's present schedule, leaving Asheville at 2:35 p.m., with the Asheville-New York sleeping car, arriving at Greensboro at 8:10 p.m. where the Pullman would be interlined with Train No. 38 for New York; and further, the consolidated trains would continue to offer coach service.

No protests were received by the Commission and no one appeared at the hearing in opposition to Petitioner's application.

The evidence offered by Petitioner with reference to the consolidated train schedules is the same as that hereinabove quoted, as well as the present schedules of Trains No. 15 and No. 21 and No. 16 and No. 22. Petitioner offered financial data relating to operating passenger Trains No. 21 and No. 22 between Greensboro and Asheville for the twelve months' period ended November 30, 1967, which tended to show direct expenses in excess of revenues in the amount of $153,300, and direct expenses resulting from the operation of passenger Trains No. 15 and No. 16 between Greensboro and Asheville for the same period of $219,800 in excess of revenues, together with the number of passengers transported from and between each of the towns along the route of Petitioner between Greensboro and Asheville. Also offered for the record were the 1960 public census records for each of the towns along the route, the ratio of persons per registered passenger automobile in each of the counties traversed, a description of scheduled airline service between Greensboro, Winston-Salem, Hickory and Asheville, and a description of common carrier motor bus service between Greensboro and Asheville and intervening points.

FINDINGS OF FACT

In consideration of the evidence adduced in support of the application, and there being none to the contrary, the Commission is of the opinion and finds:

1. That public convenience and necessity does not require Petitioner to continue the operation of passenger Trains No. 15 and No. 21, westbound, and No. 16 and No. 22, eastbound, between Greensboro and Asheville as the same are now being operated.

2. That there is a need for railway passenger service between Greensboro and Asheville and that the proposed consolidation of the four above-numbered trains into a schedule which provides service leaving Greensboro at 6:40 a.m., arriving Winston-Salem at 7:20 a.m., and Asheville at 12:45 p.m., handling the New York-Asheville sleeper, would adequately serve the needs of the traveling public; and likewise, that the proposed consolidated train, eastbound, leaving Asheville at 2:35 p.m., with the Asheville-New York sleeping car, and arriving at Greensboro at 8:10 p.m. and there connecting with interlining Train No. 38 for New York will serve the demands and needs of the traveling public needing rail passenger service between Asheville and Greensboro and points beyond.

3. That the direct expenses of operating the four trains as presently scheduled are out of proportion to the use being made of said trains by the public and that the proposed consolidation should be allowed.

CONCLUSIONS

The Commission has carefully considered Petitioner's application, its effect upon the traveling public using passenger train service between Greensboro and Asheville, and has also given consideration to the effect that four train crews are necessary in the operation of the two trains between Asheville and Winston-Salem and two train crews between Winston-Salem and Greensboro and that the consolidation as herein applied for would eliminate the necessity of two crews between Asheville and Winston-Salem and one crew between Winston-Salem and Greensboro, or a total of three crews. Considering the testimony of Petitioner that each of the two routes above mentioned is a seniority district and of its need for additional personnel in its system, loss of employment by the train crews is not likely to occur. We have considered the extent to which the traveling public is now using the service offered by Petitioner and we conclude that the consolidated schedules proposed by Petitioner will adequately serve Petitioner's patrons over its lines between Asheville and Greensboro.

WHEREFORE, IT IS ORDERED That the application of Southern Railway Company for authority to consolidate the operation of its passenger Trains No. 15 and No. 21, westbound, and No. 16 and No. 22, eastbound, between Greensboro and Asheville, in accordance with the proposed consolidated schedules, be and the same is hereby authorized.

IT IS FURTHER ORDERED That Petitioner be, and it is hereby, authorized to institute the consolidated service herein authorized effective February 1, 1968.

IT IS FURTHER ORDERED That a copy of this order be transmitted to the Petitioner and to the attorneys of record in this proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of January, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-78, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Hughes Treadway, Hershal Ramsey, Allen Ball, Carroll Eastwood, Bryan Teague and Regan Marler, Route 1, Marshall, North Carolina, Complainants vs. Westco Telephone Company and Southern Bell Telephone and Telegraph Company, Defendants	ORDER

HEARD IN: Room 207, Buncombe County Courthouse, Asheville, North Carolina, on May 30, 1968, at 10:30 a.m.

BEFORE: Commissioners H. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Complainants:

Robert S. Swain
Attorney at Law
303 N.W. Building
Asheville, North Carolina
For: Hughes Treadway, et al

For the Defendants:

Emerson D. Wall
Van Winkle, Buck, Wall, Starnes and Hyde
Attorneys at Law
P.O. Box 7376, Asheville, North Carolina
For: Westco Telephone Company

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina
For: Southern Bell Telephone and Telegraph Company

Mr. Harvey L. Cosper
General Attorney
Southern Bell Telephone and Telegraph Company
801 Jefferson Standard Life Building
Charlotte, North Carolina

For: Southern Bell Telephone and Telegraph Company

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

BIGGS, COMMISSIONER: By letter, treated as a complaint, dated February 28, 1968, and received by the North Carolina Utilities Commission (Commission) on March 4, 1968, the complainants seek to have the boundary line of the service areas of Westco Telephone Company (Westco) and Southern Bell Telephone and Telegraph Company (Southern Bell) changed so as to take the area where the complainants reside out of the Westco service area and place it in the Southern Bell service area. More specifically, the complainants seek to change the service area boundary in the vicinity of State Road No. 1001 from the run of Simmons Branch to the run of Trail Branch. The approximate location of said changed boundary line is shown on Westco Exhibit No. 1, and the verbal description of said proposed new boundary line, as set forth in an amendment to the complaint, is as follows:

"...the top of the map being north, [Westco Exhibit No. 1] the Trail Branch is northeast of the present boundary which is Simmons Branch. Simmons Branch and Trail Branch are divided by a small ridge at the commencement from its origin generally in a south southwesterly direction and crosses the Sandy Mush Road at a point just north of the residence of Allen Ball. It proceeds then generally to the east of the Sandy Mush Road, the Marshall Road, to a point in the Sandy Mush Creek which is the boundary between Buncombe County and Madison County...."

Upon notice of hearing duly given, this matter was heard on May 30, 1968, beginning at 10:30 a.m., in Room 207, Buncombe County Courthouse, Asheville, North Carolina, at which hearing complainants and the defendants appeared and presented evidence.

FINDINGS OF FACT

Based upon the evidence adduced at the hearing, the Commission makes the following findings of fact:

1. Westco and Southern Bell are engaged in the business of providing telephone service to subscribers within their respective service areas, being authorized to do so pursuant to certificates of public convenience and necessity issued by this Commission, and each of said telephone companies is ready, willing and able to provide telephone service throughout the service area assigned to it.

2. The area in question, which the complainants seek to have removed from the service territory of Westco and placed

in the service territory of Southern Bell, lies in Madison County on either side of State Road No. 1001 just north or northeast of the present boundary line between the service areas of Southern Bell and Westco, which boundary line runs along Simmons Branch at that point. The area is occupied by six families, all of whom are complainants in this proceeding.

3. At the present time, there are no telephone lines or facilities within the area in question, and none of the residents or occupants of the area subscribe for telephone service.

4. The area in question is presently a part of the Westco service area, but the residents of said area have never applied to Westco for telephone service, and, until recently, Westco has not had any telephone lines in the vicinity with which to provide service. In recent months, however, Westco has put in a telephone cable extending to the residence of Pearson Ball, who resides just north of Trail Branch which is the proposed new boundary line. The new Westco cable is sufficient to provide telephone service to the complainants upon their request.

5. Southern Bell has not heretofore been responsible for providing telephone service in the area in question, but for some time it has had a cable running along State Road No. 1001 to Ashe Store at or near the boundary line between it and Westco, and said cable is presently sufficient to provide the telephone service desired by the complainants.

6. The complainants will not accept telephone service from Westco for the stated reasons that they have no need for such service because their calling interests are predominately in the Southern Bell exchanges. In the past, the complainants have frequently borrowed the telephone of their neighbor in order to place calls and have received messages through their neighbor from those seeking to contact them. Such an arrangement is archaic as well as being burdensome to the neighbor.

7. The needs of the people residing within the area in question for telephone service, who are the complainants in this action, can best be met by Southern Bell service.

CONCLUSIONS

The Commission is not inclined to violate the integrity of service area boundaries unless the circumstances are most unusual. It recognizes that the telephone companies have made investments in plant facilities and have designed and constructed their facilities so as to provide service throughout the area for which they are responsible, and there can be an economic detriment to the other subscribers and to the owners of the utility company if by reason of territorial changes the company is precluded from realizing the full potential of its facilities. For this reason, the

Commission has steadfastly refused to change service area boundaries when the area in question was actually served by the company having responsibility for it. The Commission has also refused to entertain requests that do not affect a substantial segment of the public.

On the other hand, the Commission does not feel that boundary lines should be so inflexible as to deprive the public of needed and desired telephone service when the only practical alternative is no service at all or a service that is totally inadequate to the needs of the community.

The instant case involves a situation where the area in question has no telephone facilities in it, where each of the telephone companies has facilities with which to service the area, and where all the occupants need and desire the service of the company not presently responsible for serving the area. Each of these persons has said that they have no need for the service of Westco and will not apply for same. A change of the boundary line as sought herein would not capture any of the Westco facilities and, in the opinion of the Commission, would not detrimentally affect the operations of Westco by substantially cutting off the potential of its present facilities. Westco apparently has no opportunity to serve the persons now residing in the area, and there is no indication that such additional development would occur in the area as to give any reasonable expectation for Westco to develop any significant business in the area in the foreseeable future.

It is concluded, therefore, that the needs and convenience of the persons residing in the area in question will be best served by changing the service area boundary line between Southern Bell and Westco as herein sought, and that such change will not adversely affect either of the telephone companies or their subscribers.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the service area boundary between Westco and Southern Bell in the vicinity of State Road No. 1001 in Madison County be changed by making the boundary between said companies the run of Trail Branch beginning from its point of origin to the point where it crosses the boundary line between Madison and Buncombe Counties, which new boundary line is more fully described and shown on Westco Exhibit No. 1 in this cause and in the verbal description above stated. Except as herein modified, the boundary line between the service areas of the two companies shall remain the same.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 430

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition by Carolina Telephone and Telegraph Company, United Utilities, Incorporated, and New Carolina Telephone and Telegraph Company for Authorizations in Connection with Plan of Merger, Including Issuance of a Certificate of Public Convenience and Necessity to New Carolina Telephone and Telegraph Company, Authorizations for Issuance of Securities, Assumptions of Rights and Obligations and Transfer of Assets	)	ORDER

HEARD IN: The Hearing Room of the Commission, Old State Library Building, Raleigh, North Carolina, on November 26, 1968, at 9:30 A.M.

BEFORE: Chairman Harry T. Westcott, Presiding, Commissioners John W. McDevitt, Thomas R. Eller, Jr., Clawson L. Williams, Jr. and M. Alexander Biggs, Jr.

APPEARANCES:

For the Petitioners:

Herbert H. Taylor, Jr.
Taylor, Brinson and Aycock
Attorneys at Law
210 East Saint James Street
Tarboro, North Carolina

Warren E. Baker
General Counsel
United Utilities, Inc.
2330 Johnson Drive
Westwood, Kansas 66208

John F. Dodd, Asst. General Counsel
United Utilities, Inc.
2330 Johnson Drive
Westwood, Kansas 66208

For the Commission Staff:

Edward B. Hipp
Commission Attorney

Larry G. Ford
Associate Commission Attorney

BY THE COMMISSION: By joint Petition filed with the Commission on September 24, 1968, Carolina Telephone and Telegraph Company (hereinafter referred to as "CAROLINA"), United Utilities, Incorporated (hereinafter referred to as

"UNITED") and New Carolina Telephone and Telegraph Company (hereinafter referred to as "NEW CAROLINA"), Petitioners, seek approval of a Plan of Merger of CAROLINA into UNITED and seek approval for the transfer of the assets, obligations and rights of CAROLINA to NEW CAROLINA; seek the issuance of a Certificate of Public Convenience and Necessity for the territory and approval of the issuance of securities, assumption of securities and obligations, and transfer of stock control as a part of such merger plan.

By Order of the Commission, dated October 16, 1968, the Petition was set for hearing at the time and place shown in the caption. The burden of proof was placed upon the Petitioners and Petitioners were required to publish notice of the hearing in the form described in Appendix "A" of said Order.

It appears from the Petition that under the provisions of the Public Utilities Act of 1963, as amended, including G.S. 62-110, G.S. 62-111 and G.S. 62-161, that the Petitioners seek the following approvals and authorizations of the Commission:

1. A Certificate of Public Convenience and Necessity for NEW CAROLINA to acquire ownership and control of the public utility system of CAROLINA and begin the operation thereof.

2. Authorization for NEW CAROLINA to issue to CAROLINA a number of shares of its common stock, par value $20.00, equal in par value to the aggregate, par value of the shares of CAROLINA'S stock outstanding at the time of the transfer of CAROLINA'S assets and franchises to NEW CAROLINA.

3. Authority for NEW CAROLINA to assume all the liabilities and obligations of CAROLINA.

4. Authority and approval of the transfer by CAROLINA of its public utility franchises and operating public utility assets to NEW CAROLINA.

5. Approval of acquisition by NEW CAROLINA of ownership and control of the public utilities assets and franchises of CAROLINA.

6. Approval of the acquisition and control of public utility franchises by UNITED through its merger with CAROLINA.

7. Approval of Agreement and Plan of Merger entered into between CAROLINA AND UNITED.

Based upon the petition and the testimony and exhibits received into evidence at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That notice of hearing in this matter was duly given by the Petitioners as required by Order of the Commission, dated October 16, 1968.

2. That CAROLINA is a public utility corporation organized and existing under the laws of the State of North Carolina and is chartered for the purpose of conducting a telephone and communications business in this State, with principal offices at 122 E. Saint James Street, Tarboro, North Carolina.

3. CAROLINA holds a Certificate of Public Convenience and Necessity to conduct its telephone and communications business in all or parts of 41 counties of North Carolina, comprising approximately 35 per cent of the geographic area of the State. CAROLINA presently has in service in its certificated territory in excess of 351,000 telephones.

4. UNITED is a holding company incorporated under the laws of the State of Kansas with principal offices at 2330 Johnson Drive, Westwood, Johnson County, Kansas. UNITED owns the entire or controlling interest in a number of telephone operating companies throughout the United States known as the UNITED TELEPHONE SYSTEM.

5. NEW CAROLINA is a corporation organized and existing under the laws of the State of North Carolina and was chartered on September 10, 1968 and authorized by its charter to conduct a telephone and communications business in this State. Its principal office is situated at 122 E. Saint James Street, Tarboro, North Carolina. NEW CAROLINA presently has no assets or liabilities and is not engaged in any operations and holds no franchises or certificates from this Commission.

6. CAROLINA and UNITED, pursuant to authority of their respective Boards of Directors have entered into an Agreement and Plan of Merger, dated July 18, 1968, which Agreement has been duly approved by vote of the respective stockholders of CAROLINA and UNITED.

7. The Agreement, dated July 18, referred to in 6 above provides, in essence, as follows:

(a) The operating public utilities assets of CAROLINA, including its public utility franchise, will be transferred to NEW CAROLINA in exchange for the capital stock of NEW CAROLINA and NEW CAROLINA will assume all of the liabilities and obligations of CAROLINA.

(b) Following the transaction described in (a) above, CAROLINA, as the holder of all issued and outstanding capital stock of NEW CAROLINA and such other stock and securities already held by it, will be merged

with and into UNITED and as a result UNITED will own all of the capital stock of NEW CAROLINA and such other stocks and securities held by CAROLINA.

(c) In the merger, each share of CAROLINA'S capital stock will be exchanged for one share of a new series of preferred stock of UNITED, designated as "Preferred Stock - Second Series Convertible". Each of such preferred shares of stock of UNITED will have one vote per share and will be convertible at any time into 1-1/4 shares of UNITED common stock.

The "Preferred Stock - Second Series" will carry a dividend of $1.25 per share per year for the first two years following the merger; $1.37-1/2 per share for the next two years; and $1.50 per share thereafter. The stock may be called and redeemed after December 31, 1975.

(d) All of the employees of CAROLINA and the present directors and officers of CAROLINA are to become the employees, directors and officers of NEW CAROLINA so that there will be continuity of management, operations and service. Following the effectiveness of the proposed merger, the name of NEW CAROLINA will be changed to "CAROLINA TELEPHONE AND TELEGRAPH COMPANY".

8. That CAROLINA is a well and competently managed company with good quality plant and equipment. Its service in its certificated territory is adequate and satisfactory and the company has no critical service problems. Its quality of maintenance of plant and its policy of operations is satisfactory and adequate. The company is financially sound and its securities have thus far been well received in the market places and the company has no immediate problems in the raising of capital.

9. That Petitioners have failed to carry the burden of proof required by §62-110 and 62-111 of the General Statutes of North Carolina and the Commission finds that approval of the proposed merger transaction is not required nor justified by the public convenience and necessity.

Based upon the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

The Commission is of the unanimous opinion that the Petitioners have not adequately borne the burden of proof required of them in this proceeding.

G. S. 62-110 provides:

"No public utility shall hereafter begin the construction or operation of any public utility plant or system or

acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation."

G. S. 62-111(a) provides:

"No franchise now existing or hereafer issued under the provisions of this chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity."

G. S. 62-161(a) and (b) set forth the conditions which must be met before a public utility may issue securities or assume liabilities.

The Commission is authorized to issue a Certificate of Public Convenience and Necessity, if, and only if, the Commission has made findings of fact supported by competent, material and substantial evidence, which findings in turn support the conclusion that public convenience and necessity "require or will require", the proposed operation by the applicant. State ex. rel. Utilities Commission vs. Carolina Telephone and Telegraph, 267, N.C. 257, 148 S.E. 2d 100 (1966).

The proposed merger involves the largest independent telephone company in North Carolina which provides telephone service for a substantial percentage of the population of the State and is certificated in 41 counties in eastern North Carolina.

The Commission's responsibilities require its careful examination and consideration of the evidence presented as to how the interest of the public will be affected by the proposed merger.

The law requires proof that the transaction proposed is required and justified by the public convenience and necessity. We do not feel that the evidence of record is adequate to show such justification or requirement.

Careful scrutiny of the record reveals that the evidence presented is very general in nature and speculative. It consists largely of opinions, beliefs, and self-serving declarations, received into evidence without objection and expressed by witnesses who were not tendered as, nor found to be, experts. We do not doubt the sincerity of Petitioners' witnesses as to their opinions and beliefs as

to what might be the benefits of the merger. However, the record fails to disclose facts and figures upon which such opinions and beliefs might be based. It is the Commission's duty to form its own beliefs and opinions on the basis of facts admitted into evidence. We would be derelict in our duties to found an Order based merely upon the opinions and beliefs of others.

It appears that the record, at best, possibly shows that the interest of the public served by CAROLINA would not be adversely affected by the proposed merger (R.p. 2|) This, however, is not the question. It must be shown by competent, material and substantial evidence that the public convenience and necessity requires approval of the proposed merger. We can find nothing in the evidence which tends to prove such requirement. A mere showing that the merger will not be harmful is not sufficient. Accordingly, we make the following:

ORDER

That the petition filed herein and the relief requested in said petition is hereby denied and the petition dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the |8th day of December, |968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-70, SUB 85

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application of North Carolina Telephone Company and Lilesville Telephone Company for Authority Permitting North Carolina Telephone Company to Acquire the Outstanding Capital Stock of Lilesville Telephone Company and Merge Lilesville Telephone Company into or with North Carolina Telephone Company	ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on November |9, |968, at |0:00 A.M.

BEFORE: Chairman Harry T. Westcott, Presiding; Commissioner John W. McDevitt; Commissioner M. Alexander Biggs, Jr.

APPEARANCES:

FOR THE APPLICANTS:

B. Irvin Boyle
Boyle, Alexander & Carmichael
623 Law Building
Charlotte, North Carolina 28202
For: North Carolina Telephone Company

A. Paul Kitchin
Country Club Road
Wadesboro, North Carolina 28170
For: North Carolina Telephone Company

H.P. Taylor, Jr.
Taylor, McLendon & Jones
Anson Professional Building
Wadesboro, North Carolina 28170
For: Lilesville Telephone Company

FOR THE COMMISSION'S STAFF:

Edward B. Hipp
Commission Attorney
P.O. Box 991, Raleigh North Carolina 27602

Larry G. Ford
Associate Commission Attorney
P.O. Box 991, Raleigh, North Carolina 27602

NO PROTESTANTS

WESTCOTT, CHAIRMAN: This matter comes before the Commission on a Joint Application filed on July 19, 1968, by North Carolina Telephone Company (North Carolina) and Lilesville Telephone Company (Lilesville), wherein authority is sought for North Carolina Telephone Company to acquire by purchase for cash all of the outstanding capital stock of Lilesville Telephone Company and to merge Lilesville Telephone Company into or with North Carolina Telephone Company.

On August 20, 1968, the Commission issued a form of notice to be published in a newspaper of general circulation in the service areas once a week for two consecutive weeks prior to the date of the hearing. The notice set the matter for hearing on Tuesday, November 19, 1968, at 10:00 A.M. in the Hearing Room of the North Carolina Utilities Commission, Raleigh, North Carolina, at which time any and all interested parties would be heard.

Notice of the purpose, time and place of hearing was published in The Messenger and Intelligencer, Wadesboro, North Carolina, on October 23, and October 30, 1968, said newspaper having general circulation in the areas served by the petitioners. The record tends to show that North

Carolina Telephone Company is a corporation organized and existing under the laws of the State of North Carolina and is engaged in the business of operating a telephone company as a public utility in the Counties of Mecklenburg, Union, Anson, Stanly, Hoke, Scotland, Richmond and Moore, and is subject to the jurisdiction of the North Carolina Utilities Commission; Lilesville Telephone Company is a corporation organized and existing under the laws of the State of North Carolina and also is engaged in the business of operating a telephone company as a public utility in the Town of Lilesville and in a portion of Anson County, adjacent thereto.

When the matter was called for hearing, by permission of the North Carolina Utilities Commission and without objection from any of the participants, the Lilesville Telephone Company amended the original petition so as to permit the sole stockholder of the company to receive a cash payment of Nine Thousand Dollars ($9,000) for his stock from the North Carolina Telephone Company during 1968, and the remainder in twenty (20) equal annual principal payments of Twelve Thousand Five Hundred Dollars ($12,500) each with interest at 5-1/2% per annum, payable semiannually on the unpaid principal balance of said indebtedness, which is to be evidenced by a note which is to be secured by the pledge of securities issued by the United States Government or some political subdivision thereof acceptable to both the North Carolina Telephone Company and Lilesville Telephone Company. The first of the said deferred principal payments is to become due in 1969.

The Honorable H.P. Taylor, Jr., then stated in open court that the Lilesville Telephone Company and its principal stockholder were satisfied with the terms of the proposed sale and it was their opinion that approval of the sale was justified by public convenience and necessity. In support of this conclusion, James R. Clark, the sole stockholder and chief executive officer of the Lilesville Telephone Company, was tendered for cross-examination. Linn D. Garibaldi, President of North Carolina Telephone Company, then testified as to the details of the proposed sale, including the nature and extent of the properties to be acquired, the purchase price and the method of its payment, the examination of the assets and the valuation placed thereon by North Carolina Telephone Company, the plans for continued employment of employees of the Lilesville Telephone Company, and the proposed construction to be effected within the franchised territory of Lilesville Telephone Company. The evidence was concluded with the testimony of S.J. Painter, Director of Accounting for the North Carolina Utilities Commission, who testified concerning the manner and scope of the investigation made by him and the staff members of the North Carolina Utilities Commission relative to the assets owned by the Lilesville Telephone Company, the valuation of the assets and his recommendation for the amortization of $175,673.13, which is the amount of acquisition adjustment associated with the purchase.

From the evidence, exhibits attached to the Application and from the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. The North Carolina Telephone Company is a corporation organized and existing under the laws of the State of North Carolina and is engaged in the business of operating a telephone company as a public utility under the supervision and control of the North Carolina Utilities Commission in the Counties of Mecklenburg, Union, Anson, Stanly, Hoke, Scotland, Richmond and Moore.

2. The Lilesville Telephone Company is a corporation organized and existing under the laws of the State of North Carolina and is engaged in the business of operating a telephone company as a public utility in the only portion of Anson County which is not included now within the franchised territories or areas of the North Carolina Telephone Company.

3. The total authorized common capital stock of the North Carolina Telephone Company is Two Million Five Hundred Thousand Dollars ($2,5000,000) which is divided into 2,500,000 shares of common stock of the par value of One Dollar ($1.00) each; that as of the date the petition was filed by the North Carolina Telephone Company, the corporation had issued and outstanding 2,017,416 shares of said common stock.

4. The total authorized capital stock of the Lilesville Telephone Company is Thirty Seven Thousand Five Hundred Dollars ($37,500) divided into 1,500 shares of common capital stock of the par value of Twenty-Five Dollars ($25.00) each, and as of the date of the filing of the petition, the corporation had issued and outstanding a total of 828 shares of said common capital stock which were owned in their entirety by James R. Clark.

5. Subject to the approval of the North Carolina Utilities Commission, an agreement was entered into by and between the North Carolina Telephone Company and James R. Clark for the sale of all of the outstanding capital stock of the Lilesville Telephone Company by James R. Clark to the North Carolina Telephone Company for the sum of Two Hundred Fifty-Nine Thousand Dollars ($259,000) based upon computations which assumed that a total of 518 stations will be in service at the time of closing but provides that the purchase price for said stock will be increased or decreased at the rate of Five Hundred Dollars ($500.00) a station based upon the actual number of stations in operation at the time of the closing of the sale.

6. As set forth in the amendment to the petition filed at the time of hearing in this matter, the North Carolina Telephone Company proposes to pay in cash for the stock of

Lilesville Telephone Company during the calendar year 1968, the sum by which the purchase price exceeds the total sum of Two Hundred Fifty Thousand Dollars ($250,000) and the remaining portion of the purchase price is to be paid in twenty (20) equal annual installments of Twelve Thousand Five Hundred Dollars ($12,500) each, plus interest on the unpaid principal balance at the rate of 5-1/2% per annum, said interest payments to be made semiannually and the total indebtedness secured by the pledge of securities issued by the United States Government or some political subdivision thereof acceptable to both the North Carolina Telephone Company and the Lilesville Telephone Company.

7. The North Carolina Telephone Company has made the necessary field examinations and through its officers and agents familiarized itself otherwise with the plant and properties of the Lilesville Telephone Company, and this study and examination has been supplemented by an independent study and examination conducted on behalf of the Commission by its Director of Accounting and the other members of his staff.

8. The valuation of all of the stock of the Lilesville Telephone Company based upon Five Hundred Dollars ($500.00) for each station in operation computed on the basis of 518 stations totals Two Hundred Fifty-Nine Thousand Dollars ($259.000) subject to increase or decrease at the rate of Five Hundred Dollars ($500.00) a station at the time of closing is a fair and reasonable value and is an adequate and proper purchase price for the telephone plant, equipment and franchises of Lilesville Telephone Company.

9. It will be to the best interest of the public, the customers and subscribers of the Lilesville Telephone Company and is in accord and required by public convenience and necessity that the North Carolina Telephone Company be authorized and allowed to acquire the plant, equipment, rights and franchises of the Lilesville Telephone Company; that the North Carolina Telephone Company will use the same rates, charges and tariffs as the Lilesville Telephone Company used heretofore and will furnish equal or better service except that the tariff of the Lilesville Telephone Company permitting ten (10) subscribers per line for multiparty service will be modified to conform to the North Carolina Telephone Company tariff which permits a maximum of eight (8) subscribers to a line; that the plant, equipment and properties of the Lilesville Telephone Company will be improved by the replacement of worn or outdated equipment and increased maintenance; that the variance in tariff charges between the two companies will be reconciled so that the tariff of the North Carolina Telephone Company will control.

10. The acquisition by North Carolina Telephone Company of the capital stock of the Lilesville Telephone Company and the conveyance of its assets to the North Carolina Telephone Company subject to its liabilities and the subsequent

dissolution of the Lilesville Telephone Company corporation under the terms and conditions set forth in the Findings of Fact contained in this Order is:

(a) For a lawful object within the corporate purposes of the North Carolina Telephone Company;

(b) Compatible with the public interest and is necessary, appropriate and consistent with the proper performance by the North Carolina Telephone Company of its service to the public as a public utility;

(c) Will not impair the ability of the North Carolina Telephone Company to perform services referred to in the preceding subparagraph (b) hereof; and

(d) Reasonable, necessary and appropriate for such purposes.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Commission concludes as a matter of law that:

(a) As provided in Chapter 62 of the General Statutes of North Carolina, the North Carolina Telephone Company has shown that public convenience and necessity requires or will require the acquisition and operation of the properties and franchises of the Lilesville Telephone Company by the North Carolina Telephone Company, and the North Carolina Telephone Company's request for permission and approval to acquire such assets through the purchase of the outstanding capital stock of the corporation, the conveyance of its assets to North Carolina Telephone Company and the subsequent dissolution of the Lilesville Telephone Company corporation is approved and confirmed hereby in all respects by the North Carolina Utilities Commission.

(b) The North Carolina Utilities Commission holds and concludes as a matter of law that public convenience and necessity has been proven, and it is to the interest of the public for the North Carolina Telephone Company to acquire all of the assets of the Lilesville Telephone Company subject to its liabilities through the purchase of the outstanding capital stock of the Lilesville Telephone Company and the purchase price as set forth in the joint petition filed by North Carolina Telephone Company and Lilesville Telephone Company and as agreed upon by James R. Clark, sole stockholder of the Lilesville Telephone Company, is fair, reasonable and just.

(c) It is concluded further as a matter of law that the purchase of all of the outstanding capital stock of the Lilesville Telephone Company for the total sum of Two Hundred Fifty-Nine Thousand Dollars ($259,000) to be adjusted at the rate of Five Hundred Dollars ($500.00) per station for all stations in excess of or less than 518

stations at the date of closing is fair, reasonable and just, and that the payment of the said purchase price in the manner and at the times set forth in the Findings of Fact contained in this Order is a lawful object within the corporate purposes of North Carolina Telephone Company and is compatible with the public interest, being reasonable, necessary and appropriate for such purposes.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The North Carolina Telephone Company be and it is authorized and empowered hereby to acquire all of the outstanding capital stock of the Lilesville Telephone Company for a total purchase price of Two Hundred Fifty-Nine Thousand Dollars ($259,000) subject to adjustment at the rate of Five Hundred Dollars ($500.00) a station for all stations less than or in excess of 518 stations in operation on the date of closing, said purchase price to be paid in the manner and at the time set forth hereinbefore.

2. The purchase and sale of the stock of the Lilesville Telephone Company authorized by the preceding paragraph hereof shall become effective as of five o'clock in the afternoon on December 31, 1968, and on and after that time the properties and franchises of the Lilesville Telephone Company shall be used, maintained and operated as an integral portion of the North Carolina Telephone Company.

3. The local service tariffs of Lilesville Telephone Company shall be adopted by North Carolina Telephone Company for the Lilesville subscribers and the Lilesville property shall be subject to the North Carolina Telephone Company's General Exchange Tariff.

4. The North Carolina Telephone Company, upon completion of the purchase, shall comply with the Rules and Regulations of the Federal Communications Commission, as adopted by this Commission, by making an entry in Account 100.4, "Telephone Plant Acquisition Adjustment," to designate the sum of $175,673.73 or as to be adjusted for final purchase price as the acquisition adjustment for the assets of the Lilesville Telephone Company, said sum to be amortized over a period of twenty (20) years by appropriate charges to Account 323, "Miscellaneous Income Charges."

5. The Lilesville Telephone Company shall continue to furnish telephone service to its present subscribers until five o'clock in the afternoon, Eastern Standard Time, on December 31, 1968, at which time the North Carolina Telephone Company shall assume posession of and continue the operation of Lilesville Telephone Company.

6. Within a period of thirty (30) days following the completion of the transaction approved herein, North Carolina Telephone Company shall provide the Commission with

a copy of the journal entry recording the transaction on their general books of record.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-29, SUB 54

BEFORE THE NORTH CAPOLINA UTILITIES COMMISSION

In the Matter of
Application of Lee Telephone Company, Martinsville, Virginia, for authority to increase its rates and charges and place into effect a zone basis of surcharge in lieu of mileage charges within the area it serves in North Carolina) ORDER

HEARD IN: Junior High School Auditorium, Madison, North Carolina, on January 9, 1968, at 10:00 a.m.
and
Hearing Room of the Commission, Old YWCA Building, Raleigh, North Carolina, on January 10, 11, and 12, 1968

BEFORE: Commissioners John W. McDevitt, M. Alexander Biggs, Jr., Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Applicant:

Richard G. Long
Burns, Long & Wood
Attorneys at Law
Roxboro, North Carolina

Duane T. Swanson
Lee Telephone Company
P. O. Box 900, Lincoln, Nebraska

Melvin A. Hardies
Ross, Hardies, O'Keefe, Babock, McDugald & Parsons
Attorneys at Law
122 South Michigan Avenue
Chicago, Illinois 60603

L. H. VanHoppen
Attorney at Law
Danbury, North Carolina

For the Intervenors:

George A. Goodwyn
Assistant Attorney General
Justice Building
Raleigh, North Carolina
For: The using and consuming public

William W. Melvin
Assistant Attorney General
Raleigh, North Carolina
For: The using and consuming public

For the Complainants:

S. J. Webster, Jr.
Scott, Folger & Webster
Attorneys at Law
Murphy Street
Madison, North Carolina
For: The Town of Madison

For the Commission's Staff:

Edward B. Hipp
General Counsel
North Carolina Utilities Commission
Raleigh, North Carolina

ELLER, COMMISSIONER: These proceedings began on October 5, 1967, when Lee Telephone Company (Lee) filed application with the Commission seeking adjustment in all its rates in and for its North Carolina operations.

The Commission on October 30, 1967, entered its order setting public hearings on the application, declaring the proceedings to be a general rate case pursuant to G.S. 62-137, and requiring public notice thereof.

Following publication of the public notice aforsaid, the Commission received a number of letters of complaint and protest from customers and on December 22, 1967, the Attorney General of North Carolina was permitted to intervene for and on behalf of the using and consuming public. The Town of Madison likewise was permitted intervention as a protestant.

Hearings were held January 9, 1968, through January 12, 1968, with one day being in Madison, North Carolina, and the remaining days at the Commission's offices in Raleigh, North Carolina. At the instance of the Commission, its Staff made an investigation into the books, records, and operations of the Company. The Commission's Staff, the Company, and the Attorney General presented evidence in the proceedings, the Attorney General's evidence consisting of the testimony of some thirty-eight (38) consumers whose testimony related

primarily to service complaints and was received over objection of the Company.

Upon the evidence adduced, the Commission now makes the following

FINDINGS OF FACT

GENERAL

1. Corporate History. Lee Telephone Company is a duly created and existing corporation with headquarters in Martinsville, Virginia. It is authorized to do business in North Carolina and is a public utility providing a general telephone service in North Carolina and Virginia. The Company serves 46,154 stations, of which 9,774 (21.18%) are in North Carolina and are served through five (5) exchanges, located at Danbury, Madison, Stoneville, Walkertown, and Walnut Cove. The Company added 286 stations to its North Carolina system during the twelve (12) month's period ended June 30, 1967. Controlling interest in the common capital stock of Lee was purchased by Central Telephone Company in October, 1965, and it has effectively operated the Company since that time.

2. Nature of Increase. The proposed increase in rates for local service in North Carolina is intended to produce $196,496 in additional gross revenue, of which $92,022 will accrue to the Company's use. This income would add an average of $20.10 in additional charges annually for each station in North Carolina. The average percentage increase in local service proposed in North Carolina is 37.88%, with a range of from 32% to 120%. The Company proposes to convert from a flat mileage surchage to a zone mileage surcharge basis for service outside the established built-up areas of the exchanges. It also proposes to adjust a large volume of miscellaneous charges, bringing them generally in line with the parent company's charges for like services. Toll rates are not involved in the proceeding.

3. Test Period. Both the Company's and the Staff's computations and results are based on the end of the same test period; i.e., the twelve (12) months' period ended June 30, 1967. This test period and the methods of adjusting for the end of the period are reasonably in compliance with G.S. 62-133.

4. Allocations Procedures. The Company and the Staff used substantially identical methods in determining the portions of Applicant's total operations allocable to North Carolina, viz:

(a) Plant Allocations. Gross plant and depreciation reserve accounts were assigned between Virginia and North Carolina on the basis of actual physical location except for the commonly used headquarters building at Martinsville, Virginia, which was

allocated to North Carolina operations in the ratio of plant physically located in North Carolina (2|%), applied to joint-use floor space.

(b) Revenue Allocations. Gross operating revenues were assigned on the basis of the State in which earned, except for toll revenues which were charged between the States on the basis of the origin point of the call. This resulted in attributing to North Carolina |8% of the Company's total gross revenue, or $795,007.

(c) Operating Revenue Deductions Allocations. Operating revenue deductions were for all practicable purposes assigned on the basis of the State where charged, except for indirect expenses for maintaining Company headquarters and officers at Martinsville, Virginia, and for Central Telephone Company's expenses at its Lincoln, Nebraska, headquarters. The ratio of total stations to stations per exchange was used in allocating indirect charges for local service billing and accounting expenses and on the ratio of total tickets to exchange tickets for toll billing and accounting expenses.

(d) Capital Allocations, Capital Structure and Service Requirements. Total company capital structure and capital service requirements are attributed to the Company's North Carolina operations in the same ratio as gross plant is located; i.e., 20.|% is assigned to North Carolina.

RATE BASES

5. Original Cost. No original cost study figures were presented. The plant investment figures used both in the Staff's presentation and the Company's books have been kept in a generally uniform manner based on actual costs. This has been done since |950, from which time continuing property records permit reasonable verification. The evidence discloses no serious variance prior to this time. Accordingly, for purposes of this case, adjusted book cost figures reasonably represent original cost figures.

6. The End-of-Period Book Investment Rate Base. The Company arrives at an end-of-period gross plant investment of $4,208,289, with applicable depreciation reserve of $1,2|3,434, and working capital allowance of $|87,637 for a net end-of-period investment rate base of $3,|82,492. The Staff evidence shows an end-of-period gross plant investment of $4,208,652, applicable depreciation reserve of $1,2|3,692, working capital allowance of $78,||4, for a net end-of-period rate base of $3,073,074.

The difference between the Staff's net end-of-period investment rate base and the Company's investment rate base

is primarily due to different methods used in computing working capital allowances, viz:

(a) The Staff included only a portion of the common materials and supplies located at Company headquarters in Martinsville, Virginia, and miscellaneous adjustments for an allowance of $57,648 whereas the Company claimed $96,306 for this item.

(b) The Company did not include the credit effect of income tax accrual, which the Staff included in the amount of $70,5000.

Having considered the foregoing, we find that the Staff's computation is in accordance with previously upheld rulings of the Commission and the prescribed Uniform Sysytem of Accounts. We, therefore, find that the reasonable net book investment rate base for Lee Telephone Company's utility plant used and useful in rendering telephone service in North Carolina at June 30, 1967 (the end of the test period), is $3,073,074. We further find that this amount reasonably represents the original cost rate base for Lee Telephone Company in its North Carolina operations.

7. Trended Original Cost Rate Base. The Company introduced evidence tending to show that the gross trended original cost of its allocated North Carolina utility plant is $4,957,462, with a trended depreciation reserve attributable thereto of $1,487,690, for a net trended original cost rate base of $3,872,330.

The Staff did not present a trended original cost rate base study, but was permitted to introduce calculations tending to show a trended rate base of $3,710,023. We find the trended original cost rate base is $3,800,000.

8. Fair Value Rate Base. Having fully considered and given full weight to the reasonable original cost of Lee's property used and useful in providing the service to the public within this State, less that portion of the cost which has been consumed by previous use recovered by depreciation expense, the replacement cost of the property as shown by trending such depreciated cost to current cost levels, and the evidence before the Commission relating to the present condition and use of the Company's property in the State, the fair value of the Lee Telephone Company's public utility property used and useful in providing the service rendered to the public within this State is $3,535,000.

OPERATING REVENUES

9. Estimated Revenue Under Present Rates. The Company presented evidence tending to show that its annual gross operating revenues under present rates is $795,007. The Staff's evidence tends to show such revenues to be $795,808.

we find the Company's reasonable annual gross operating revenues under present rates is $795,000.

10. Estimated Revenues Under Proposed Rates. The Company evidence tends to show gross operating revenues under the proposed rates to be $995,018; the Staff's comparable evidence shows this to be $992,304; annual gross operating revenues under the rates hereinafter found to be reasonable and approved would be $927,294.

OPERATING REVENUE DEDUCTIONS

11. Depreciation Expense. The Company's evidence shows annual depreciation expense of $172,114 and the Staff shows $168,864. We find the reasonable annual cost consumed by depreciation is $168,864.

12. Taxes. The Company shows annual taxes of $115,682 under the present rates and $223,793 under the proposed rates. The Staff shows $122,050 in taxes under present rates and $228,262 under the proposed rates. We find a reasonable and actual annual tax liability to be $122,050 under the present rates and $228,262 under the proposed rates. Under the rates hereinafter found reasonable and approved, the Company's reasonable annual tax liability is estimated at $193,166.

13. Other Operating Expenses. Total operating expenses are shown by the Company to be $366,768; by the Staff to be $355,540. We find $355,540 in total operating expenses to be actual, reasonable, and legitimate.

CAPITAL STRUCTURE AND REQUIREMENTS

14. Net Operating Income for Return. The Company's evidence tends to show a net operating income for return of $140,276 under present rates and $232,176 under the proposed rates. The Staff shows $150,523 and $242,545, respectively. Allowing for all operating revenue deductions herein found reasonable, the Company would be permitted net operating income for return of $212,100 under the rates hereinafter found reasonable and approved.

15. Capital Structure. Capital structure allocated to North Carolina as heretofore found shows total capitalization of $3,365,808, consisting of $1,602,786 long-term debt (47.62%) at interest rates varying from 3% to 6 3/8%, equity capital (38.99%) totalling $1,312,226 and comprised of $504,267 in common capital stock, $193,346 in premium on common stock, and $614,727 in earned surplus ($604,125 unappropriated); and short-term debt (13.39%) of $450,796 at 5 1/2%, of which $189,756 is in advances from the parent company.

16. Debt Service. Applicant's reasonable annual fixed charges are $82,270 for long-term debt and $24,794 for

short-term debt, for a total annual actual and reasonable debt service requirement of $107,064.

17. Capital Costs - Common Equity. Applicant is earning 3.31% on its common equity attributed to North Carolina operations under present rates and for the past three (3) years has averaged 7.27% annually under the present rates. The Company would earn 10.33% on its common equity under the proposed rates. It would be permitted to earn 8% return on common equity under the rates hereinafter found reasonable and approved.

18. Rates of Return. The Company is earning a rate of return on the fair value of its property as herein found of 3.10% under present rates. It would be permitted to earn a rate of return of 6.86% on the fair value of its property as herein found under the proposed rates. The rates hereinafter found reasonable and approved would permit the Company to earn a rate of return of 6% on the fair value of its property as herein found.

19. Fair Rate of Return. Giving full consideration to enabling Lee Telephone Company by sound management to produce a fair profit for its stockholders, considering changing economic conditions and all other factors of record and supported by competent, material, and substantial evidence, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to enabling the Company to compete in the market for capital funds which are reasonable and which are fair, both to its customers and to its existing investors, a fair rate of return on the fair value of the Company's utility property is 6%.

20. Rates. Rates as proposed by the Company would permit the Company to earn, in addition to the reasonable operating revenue deductions herein found, a rate of return of 6.86% on the fair value of the Company's property herein found. To the extent such proposed rates produce, in addition to the reasonable operating revenue deductions herein found, a rate of return in excess of the fair rate of return on the fair value of the Company's property as herein found (i.e., 6% on $3,535,000), such rates are excessive, unjust, and unreasonable. Rates charged in accordance with the schedule hereto attached and marked Appendix "A" and made a part hereof, will permit the Company to earn, in addition to the reasonable operating revenue deductions herein found, a fair rate of return on the fair value of its public utility property used and useful in providing the service rendered to the public within this State and constitute rates that are just and reasonable, both to the Applicant and to the public.

CONCLUSIONS

1. Applicant, Lee Telephone Company, is properly before the Commission, which has jurisdiction over the Applicant as

to its utility services in North Carolina and over the subject matter in these proceedings.

2. While both original cost and replacement value of the Company's utility properties within North Carolina have been considered, we conclude that neither constitutes a proper rate base. We have, therefore, arrived at our own independent conclusion, without reference to any specific formula, both as to the fair value of the Company's property and a fair rate of return on that fair value.

3. The essence of all protestant testimony was that the quality of service rendered by Lee Telephone Company in this State is poor. In a measure, the Company conceded the overall justification for these service complaints and stated its plans to invest some $1,448,300 in improving its North Carolina facilities in the near future. The Commission concluded for the record at the time of this testimony and now reiterates that, while it is the Commission's responsibility to require the highest standards of service concomitant with reasonable rates and while the quality of utility service being rendered by utility property has some bearing on the value of the property and the rate it should be permitted to earn, the statutory rate-making formula is controlling. However, the Commission had its Staff present for the hearings. All complaints were noted and investigated from the service standpoint.

4. From the nature and extent of the complaints made and from statements and testimony of company representatives, we conclude that the telephone service currently offered and rendered the public in North Carolina by Lee Telephone Company is inadequate and of poor quality, particularly in the areas of toll service, local central office service, and in the high percentage (38%) of unsatisfactory multiparty main station service (8 to 10 subscribers per line). Lee Telephone Company should take immediate remedial action in these areas.

5. We conclude that, to a material degree, Lee Telephone Company's apparent inability to realize a fair return on the fair value of its utility property is due not so much to need for higher rates as to its failure to offer and provide first class service to all subscribers, present and potential. This failure in turn is due, not only to the quality of the service per se but to the Company's archaic, prohibitive, and unjustly discriminatory pricing structure, present and proposed. In particular, the Company's system of mileage surcharges on all graded service in many cases results in deprivation of that service as effectively as if the service were not offered. An illustration of this deprivation of service and revenues through pricing is the case of a subscriber living eight (8) miles from the built-up area of Madison, where primary service is offered:

Under present rates, for a one-party residential Telephone, this subscriber would pay a $4.70 monthly basic

charge, plus $16.00 as a mileage surcharge, for a total of $20.70 monthly under present rates. Under the proposed rates, the same subscriber would pay a $6.60 monthly basic charge, plus $8.40 in mileage, for a total of $15.00 monthly. Under the rates herein approved this subscriber would pay $6.60 for basic service plus $5.50 for mileage, for a total monthly charge of $12.10. We conclude that the reduction of mileage charges as herein provided will enable the Company to obtain many customers and local exchange revenues which would not otherwise be obtained. These customers will then contribute materially more toll and associated revenue to the Company than could be expected if they were on lines with 8 to 10 other subscribers. No substantial increases in the rates for multiparty service should be allowed pending its elimination because the quality of such service does not merit charges significantly greater than already being paid.

6. In addition to the reduction of excessive and unjustly discriminatory mileage charges as aforesaid, it is our judgment, consistent with the facts of this case and the Commission's previously announced policy, necessary that Lee Telephone Company as early as feasible take positive steps toward reducing the number of subscribers on any one line to no more than four and should completely eliminate both mileage surcharges and multiparty service (more than four on a line) by December 31, 1972.

Accordingly, IT IS ORDERED:

1. That the application in this docket be, and it hereby is, approved consistent with the premises. In all other respects, the application is disapproved.

2. Applicant, Lee Telephone Company, is authorized to file and make effective on all bills rendered on and after June 1, 1968, its tariffs containing rates and charges in accordance with the schedule of rates and charges contained in Appendix "A" attached and incorporated. No mileage charges other than those herein approved shall be made applicable to the rates and charges hereby approved and authorized.

3. Applicant shall, beginning not later than June 30, 1968, and at the end of each third month thereafter until further notice submit detailed reports of its progress in up-grading its service to its customers and the financial and operating conditions of the Company at said times.

4. Applicant shall, not later than July 1, 1968, file with this Commission its revised Local Exchange Tariff Sheets providing that at such times as the number of main stations connected to a multiparty line reaches four (4) or less, the telephone company will, after thirty (30) days written notice to each subscriber on the line, reclassify the service to four (4) party and apply the applicable four-

party flat rate without mileage as herein approved and provided.

5. Applicant, Lee Telephone Company, shall, within ninety (90) days from the date this order issues, file with this Commission for approval a time schedule providing for the progressive reduction of mileage surcharges and service with more than four (4) subscribers on a line so that both mileage surcharges and such multiparty service shall be eliminated not later than December 31, 1972.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of June, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

NOTE: For Appendix "A" see the official Order in the Office of the Chief Clerk.

DOCKET NO. P-19, SUB 96

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of General Telephone Company of the Southeast for Authority to Issue and Sell Securities) ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on May 16, 1968, at 10:00 A.M.

BEFORE: Chairman Harry T. Westcott (presiding), and Commissioners John W. McDevitt and M. Alexander Biggs, Jr.

APPEARANCES:

For the Petitioner:

James L. Newsom and
A. H. Graham, Jr.
Newsom, Graham, Strayhorn & Hedrick
P. O. Box 2088, Durham, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: This cause comes before the Commission upon an application of General Telephone Company of the Southeast (Petitioner), filed under date of April 26, 1968, through its Counsel, Newsom, Graham, Strayhorn & Hedrick, Durham, North Carolina, wherein approval of the Commission is sought as follows:

1. To issue and sell through private placement $15,000,000 principal amount of its First Mortgage Bonds, Series O, due 1998, bearing interest at a rate of 7-1/8% per annum;

2. To execute and deliver to the Trustees a Fourteenth Supplemental Indenture to an Original Indenture as security for payment of the Bonds; and

3. To issue and sell to General Telephone & Electronics Corporation, its parent, 400,000 shares of its Common Stock with a par value of $25 per share, for $10,000,000 cash.

PETITIONER is a Virginia corporation doing business in the State of Virginia and duly qualified to transact business as a foreign corporation in the State of North Carolina, as well as in South Carolina, Georgia, Tennessee and West Virginia; that its general office and principal place of business is located at 3632 Roxboro Road, Durham, North Carolina; and that it is a telephone company owning and operating telephone properties in each of the six states mentioned above.

PETITIONER through evidence presented at the hearing represented that it currently had outstanding temporary bank loans in excess of $27,000,000. It was further represented, to be supported by a late exhibit, that these funds have been invested in the expansion and improvement of Petitioner's telephone plant and facilities.

PETITIONER further represents that it now proposes, subject to approval of the appropriate regulatory agencies, to issue and sell $15,000,000 of First Mortgage Bonds, to be designated Series O (the New Bonds) and to be secured by its Indenture of Mortgage to the First National Bank of Chicago and Robert L. Grinnell, as Trustees (Wm. K. Stevens, successor individual Trustee), dated as of November 1, 1947, as supplemented and amended by thirteen supplemental indentures, and as to be supplemented and amended by a fourteenth Supplemental Indenture substantially in the form and content of a proof copy which is Exhibit 5 to the application. It is further represented that the New Bonds will be dated May 1, 1968, expressed to mature in thirty (30) years on May 1, 1998, and will bear interest at a rate of 7-1/8% per annum. It is further represented that the New Bonds will be sold to institutional investors through private placement, plus accrued interest to date of sale.

PETITIONER represents that it also proposes to issue and sell, at par, to General Telephone & Electronics Corporation, its parent, 400,000 shares of its Common Stock of the par value of $25 per share, for cash, in the aggregate amount of $10,000,000.

PETITIONER further represents that the expenses estimated to be incurred in connection with the issuance and sale of the securities described herein will be approximately $96,000 which includes provision for payment of a placement fee of $38,000 or approximately one-fourth of one per cent of the aggregate par amount of the New Bonds. It is further represented that the proceeds derived from the sale of these securities will be applied to the payment of short-term bank loans.

From a review and study of the application, its supporting data, and other information in the Commission's files, the Commission is of the opinion and so finds that the transactions herein proposed are:

(a) For a lawful object within the corporate purpose of the petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service;

(d) Reasonably necessary and appropriate for such purposes;

THEREFORE IS IS ORDERD, That General Telephone Company of the Southeast be, and it is hereby authorized, empowered, and permitted under the terms and conditions set forth in the application:

1. To issue and sell through private placement $15,000,000 principal amount of its First Mortgage Bonds, Series O, Due 1998, bearing interest at a rate of 7-1/8% per annum;

2. To execute and deliver to Trustees a Fourteenth Supplemental Indenture to an Original Indenture as security for payment of the Bonds; and

3. To issue and sell to General Telephone & Electronics Corporation, its parent, 400,000 shares of its Common Stock with a par value of $25 per share, for $10,000,000 cash.

IT IS FURTHER ORDERED, That the proceeds to be derived from the issuance and sale of the securities described herein shall be devoted to the purposes set forth in the application.

IT IS FURTHER ORDERED, That the Petitioner shall file with this Commission, when available in final form, one (1) copy each of the Fourteenth Supplemental Indenture and Bond Purchase Agreement or Contract.

IT IS FURTHER ORDERED, That the Petitioner shall file with this Commission, in the future, a notice of negotiations of short-term notes, dates of maturity, rate of interest and principal amount. Such report shall be filed within thirty (30) days of issuance of such notes.

IT IS FURTHER ORDERED, That the Petitioner within a period of thirty (30) days following the completion of the transaction authorized herein, shall file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted.

IT IS FURTHER ORDERED, That nothing contained in this Order shall be construed to require the Commission to consider the historical dividends in the setting of rates, such rates to be prescribed to provide a fair rate of return on investment and a fair return on equity.

IT IS FURTHER ORDERED, That all balance sheet statements issued by the Petitioner are to be footnoted to the effect that all the common stock is owned by General Telephone & Electronics Corporation and was acquired at par value.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-29, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In The Matter of
Application of Lee Telephone Company for Authority)
to Issue and Sell 95,602 shares of Common Stock of) ORDER
the Par Value of $10.00 each)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina on October 9, 1968 at 10 A. M.

BEFORE: Chairman Harry T. Westcott, Presiding, Commissioners Thomas R. Eller, Jr., John W. McDevitt, Clawson L. Williams, Jr. and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

Melvin A. Hardies
Ross, Hardies, O'Keefe, Babcock, McDugald & Parsons
Attorneys at Law
122 South Michigan Avenue
Chicago, Illinois

For the Protestants:

William F. Stone
Stone, Joyce, Worthy & Monday
Attorneys at Law
Box 1432
Martinsville, Virginia
For: Mrs. C. C. Lee, et als
Mr. N. R. Burroughs
(During the course of the hearing, Mr. Stone withdrew as an attorney in order to appear as a witness)

For the Using and Consuming Public:

George A. Goodwyn
Assistant Attorney General
Old State Library Building
Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

Larry G. Ford
Assistant Commission Attorney
Raleigh, North Carolina

WILLIAMS, COMMISSIONER: By Application filed with the Commission on June 28, 1968, Lee Telephone Company proposes to raise $2,500,000.00 of permanent equity capital by the sale of 95,602 shares of its authorized and unissued common stock to its parent corporation, Central Telephone & Utilities Corporation, at book value. Applicant seeks approval of said sale under G. S. 62-161.

Applicant proposes to use the funds derived from said sale to discharge indebtedness incurred to finance its construction expenditures.

Applicant's capital structure consists of 35% common stock equity and 65% debt. If the proposed shares of common stock are issued as applied for, the capital structure would be 48% common stock equity and 52% debt.

The Commission entered an Order on July 2, 1968 setting the matter for investigation and hearing on August 8, 1968, and requiring applicant to notify, by mail, all of the shareholders of the company of the time, place and purpose of said hearing, which notice was duly given.

Protests were duly made by the Attorney General and certain of the shareholders as shown in the caption and they were allowed to intervene.

By Order, dated July 30, 1968, the hearing previously set for August 8, 1968 was continued to October 9, 1968 and held as shown in the caption.

From the testimony and exhibits received into evidence at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Applicant is a Virginia corporation duly authorized to transact business in North Carolina and is engaged in the rendition of telephone service in parts of North Carolina and Virginia and is subject to the jurisdiction of this Commission. Applicant is a subsidiary of Central Telephone & Utilities Corporation, which parent corporation owns approximately 86.5% of the presently outstanding 251,129 shares of the common capital stock of Lee Telephone Company. The remaining outstanding shares are held by the protestants and various other members of the general public.

2. The book value of applicant's common stock at April 30, 1968, as alleged in the petition, was $26.15 per share. At the time of the hearing this value had risen to approximately $26.20 per share as of September 30, 1968. The parent corporation offers to pay the latest available book value per share for said shares when and if the proposed purchase is approved by the Commission.

3. Under §8 of Article 4 of Applicant's Restated Articles of Incorporation, stockholders of Lee have no pre-emptive rights to purchase additional issues of stock in the company.

4. Applicant's common stock is traded over the counter and is not listed on any stock exchange. Said shares are not frequently traded and there is no fixed or easily defined market price for such securities. The parent corporation paid $42.50 per share for said stock when it first acquired control in December, 1965. In May, 1966, the parent corporation offered to purchase the stock of the minority holders thereof at $52.50 per share. From all the evidence, the Commission finds that the fair market value of applicant's stock exceeds $40.00 per share and substantially exceeds book value.

5. Protestants and those like situated are minority shareholders of Lee Telephone Company. It is their contention, and the Commission finds as a fact, that the proposed sale of 95,602 shares at book value will cause a depression in the market value of presently outstanding shares, at least for some period of time, to the detriment of the minority shareholders. Conversely, such sale would result in an immediate potential unjust enrichment to the purchasing parent corporation in that the new shares purchased at book would have a market value in excess of book, reduced from present market value proportionally by the issuance of the new shares at book value.

6. Applicant has no objection to offering the new shares at book value to all of the shareholders in proportion to their present ownership, on a pre-emptive basis, but such offering would require a registration statement under the Federal Securities Act to be filed with the Securities Exchange Commission which would involve substantial expense.

7. The sale and issuance of the applicant's stock as proposed in the application is not compatible with the public interest under G. S. 62.16(b)(ii).

Based on the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

If all of Applicant's outstanding stock were owned by its parent, the Commission might have no objection to the issuance of its additional shares at book value, or any other value, chosen with no concern for market value. Such is not the case, however. There are the interests of minority shareholders which must be considered.

We feel that there can be no question but that the issuance of approximately 38% additional shares at a cost substantially lower than market value will undoubtedly reduce that market value. At the same time, the new shares issued at book would acquire an immediate value in excess of cost, which value would fall somewhere between cost and present market value. Should the purchasing parent corporation decide to sell some or all of such shares, the parent corporation would be, in our view, unjustly enriched by the amount of the capital gain realized at the expense of minority stockholders who had no control over the sale of the additional shares and no equal right to purchase such shares along with the parent.

We are well aware that the applicant's amened charter does not grant pre-emptive rights to the shareholders. However, it does not, as we read it, prohibit the company from making an offering on a pre-emptive basis. It was stated in the record that the reason the charter was amended to eliminate pre-emptive rights was to avoid the necessity and expense of

filing a registration statement with the Security Exchange Commission each time new stock was issued.

Be that as it may, we cannot say that the rights of minority stockholders in a corporation should be ignored in the interest of economy and expediency. It does not fit with our sense of justice or fairness that a corporation should offer its stock for sale to one or a portion of its shareholders to the exclusion of other shareholders of equal class.

This Commission acknowledges that we are without jurisdiction to protect the interests of minority stockholders in a corporation and that we have no authority in cases of the present nature to issue an injunction or grant other relief such as might be available to the protestants in a Court of competent jurisdiction.

However, neither do we feel that we are compelled, or so limited in authority, that we must grant our approval to the proposed transaction. Indeed, we are constrained to say that under the provisions of G. S. 62-116(b)(ii), the proposed issuance of stock is not "compatible with the public interest" when we must consider that the minority shareholders of applicant are members of the public.

It would appear to us that the only fair and equitable solution to the problem at hand would be for applicant to offer its stock to all its shareholders on a pre-emptive basis, pro-rata to the shares held by them, at whatever price per share applicant may choose. Such an offering should satisfy the protestants' objections and be fair to all stockholders.

Those shareholders choosing to exercise their rights to purchase under such a plan could exercise such rights and subscribe to as much stock at the designated price as any other stockholder on a pro-rata basis. Those not choosing to exercise their rights should, in theory at least, have a marketable property in such rights which they could sell at a price approximately equal to the difference in the issuance price of such new stock and the per share market value of the stock after the new issue. This procedure would appear to be more "compatible with the public interest" than the issue proposed.

We do not propose to substitute our managerial judgment for that of the applicant, nor its parent company. Their chosen means of raising capital is a matter within their discretion within very broad bounds prescribed by laws and regulatory bodies under which they operate. We are simply of the opinion that the proposed matter exceeds those bounds and invades the rights and privileges of others. We do not feel that this can be justified on the grounds of economy nor expediency as we stated before.

ACCORDINGLY, IT IS ORDERED That the application filed herein by Lee Telephone Company to sell 95,602 shares of its common stock to its parent company, Central Telephone & Utilities Corporation, at book value per share is disapproved and denied without prejudice to the applicant to make further filings in conformity with this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of November, |968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-29, SUB 58

Lee Telephone Company

ELLER, COMMISSION, DISSENTING. One can scarcely be without a certain sympathy for these protesting minority stockholders. They are, however, in the wrong forum. The Utilities Commission is not authorized to grant equitable relief. Whether a minority stockholder is entitled to pre-emptive rights is governed by corporate charter subject to relief in the courts. Such relief is not within the jurisdiction of the Utilities Commission as an adminstrative agency. The Utilities Commission cannot relieve "unjust enrichment", even if that vice in its true meaning could be found from this record.

Assuming without conceding that the Commission is competent to grant the relief here attempted, a proper balancing of the public interest with private interest will not permit entry of the majority order. My reasons are:

(|) The statutory tests to be applied are in G. S. 62-|6| and |70. The evidence requires findings and conclusions justifying approval on all such tests. Indeed, all the majority's findings require approval except for Finding No. 7 and the conclusions based thereon. The majority does not define "the public interest" it deems abridged by the proposed issue. Its only discussion is of the private interest of the majority stockholder (which it assumes will be "unjustly enriched" by the capital gains it would receive upon later stock sales) and the majority stockholders (whom it assumes will experience reductions, or losses, in the market place should they later sell). It is significant to observe that neither the minority stockholder will be "unjustly enriched", nor will the minority stockholder suffer "loss", unless and until they dispose of their stock, according to the major premise of the majority order. The results condemned by the majority then, are not present, but anticipated, harmful effects upon private interests of stockholders.

Without arguing the reliability of the specific stock market prices discussed by the majority, suffice to say that anticipated future market prices of existing stock, and the anticipated gains or losses from sales thereof, are simply not probative in determining the relevant issues in this proceeding. There is no regulatory basis for efforts to protect or regulate future profits or anticipated losses from future sales of capital stocks of utilities. The market place at the time of sale, which is conditioned by intangibles beyond regulatory control, will itself be the regulator on this question - not the Utilities Commission. The proper and intended way the Utilities Commission affects the future prices of utility stocks is through the earnings the Commission permits and the rates it approves. These earnings and rates, in turn, are relevant to the attraction of capital for the utility, not to the fixing of prices of existing stock for stockholders. The Commission is not authorized to establish, and it should not allow itself to be drawn into attempts to establish, some form of future "parity" for utility stock market prices.

(2) It must be remembered that this Company's service has been found inadequate and sub-standard by this Commission and that the Company is under order from this Commission to improve its service. It is axiomatic that the Company cannot improve its service without obtaining badly needed capital. This Company applied to the Commission for approval of a stock issue on October 17, 1967, (Docket No. P-29, Sub 55). After conferences, amendments, and hearings thereon, that application was withdrawn on June 27, 1968. The application herein denied by the majority was filed on June 28, 1968. The Commission is required by G. S. 62-164 to give immediate disposition (within 30 days) of utilities applications for securities issues. With this denial, the Company is no further along with a stock issue than it was when it made its filing on October 17, 1967. During this delay, the Company's customers have suffered and will continue to suffer until an issue is approved. The practical result of the majority order is that a stockholder fight is being permitted to starve the company of needed capital and to delay the customers from receiving improved service. This simply cannot be the public interest we are here to protect.

(3) Assuming Applicant accepts the implications of the majority order, takes the necessary legal steps, makes the required registration statement, and re-submits an application for an issue on a pre-emptive basis, the record indicates the expense of registration alone will be $50,000, a very substantial sum for this company under present conditions. Also implicit to the majority order is that these expenses will be charged to Lee's ratepayers. Thus, a further practical result of this order will be that the utility's ratepayers will be required to finance a stockholder fight. Lee's North Carolina territory is so small and sparse, and its service is so in need of improvement, that the luxury of financing a stockholder

fight is something its ratepayers can ill-afford. This $50,000 saved would be no small contribution if used in improving Lee's services. I cannot see how such expenditure, for such purpose, which the company seeks to avoid and which the majority is virtually compelling, can be "compatible with the public interest."

In summary, the majority order attempts indirectly to do that which it cannot do directly - grant equitable relief; it attempts to regulate that which it cannot regulate - future gains or losses on the sale of utility stocks; it seeks to settle a stockholder fight at the expense of the Applicant company and its patrons; and it has the effect of further delaying the raising of capital for the company and the acceleration of service improvements for its patrons. For the reasons assigned, I dissent.

Thomas R. Eller, Jr., Commissioner

DOCKET NO. P-10, SUB 261

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Central Telephone Company: Request for Approval of Tariff to Waive the Installation Charge on Residence Extension Stations for a Period of Sixty Days	) ORDER

BY THE COMMISSION: On April 3, 1968, Central Telephone Company filed Tenth Revised Sheet 3, Section 6, of its General Exchange Tariff, said tariff to provide for the installation of residence extension stations at no installation charge for a period of sixty days, May 6, 1968, to July 5, 1968.

By covering letter, Central Telephone Company represents they need to improve the ratio of residence extension stations to residence main stations and in order that this improvement may be accomplished it is proposed to waive the service connection charge for residence extension stations for sixty days during which time an extensive residence extension sales promotion program is planned.

Upon consideration of the circumstances and conditions relied upon, the Commission is of the opinion the covering letter should be considered as an application for authority to waive the service connection charge as outlined above; that the request should be granted and the tariff be received as filed to become effective May 6, 1968.

IT IS THEREFORE ORDERED, that said tariff is hereby approved to become effective on May 6, 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-10, SUB 261
Central Telephone Company

ELLER, COMMISSIONER, DISSENTING: I do not believe it a sound utility practice to grant concessions from standing charges. Inevitably, discrimination results against those who have already paid the charge and will also result against those forced to pay when the standard charge is reinstated after the sixty (60) day promotional period.

In view of the fact that extension telephones are such money makers through the monthly rental and increased toll calls they produce as to justify special promotion such as here, filings of this type raise the question as to whether the installation charge for extension telephones should not be permanently removed.

The approval of such concessions as here has a tendency to become precedent for the industry and I further fear that this practice will set off a flood-tide of concession filings throughout the industry on various services. This would make a hodge-podge of tariff administration and undermine the stability and predictability of telephone pricing structures.

Thomas R. Eller, Jr., Commissioner

I join in this dissent.

John W. McDevitt, Commissioner

DOCKET NO. P-10, SUB 261

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Central Telephone Company: Request for Approval of) ORDER
Tariff to Cancel the Waiving of Installation Charges)
on Residence Extension Stations for a Period of)
Sixty Days)

BY THE COMMISSION: On April 26, 1968, Central Telephone Company filed Eleventh Revised Sheet 3, Section 6, of its General Exchange Tariff, said tariff to cancel a provision for waiving the installation charge on residence extension stations for a period of sixty days, May 6, 1968 to July 5, 1968, which had been approved by the Commission by Order on April 17, 1968, with the request that the tariff be approved on less than statutory notice.

By covering letter, Central Telephone Company represented it has decided against the experimental practice and does not wish to proceed with the undertaking and therefore requests approval on less than statutory notice so that the tariff approved on April 17, 1968, will not go into effect.

Upon consideration of the circumstances and conditions relied upon, the Commission is of the opinion that the covering letter should be considered as an application for authority to file this tariff on less than statutory notice; that the request should be granted and the tariff be received as filed to become effective May 6, 1968.

IT IS THEREFORE ORDERED, that said tariff is hereby approved to become effective on May 6, 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-16, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Concord Telephone Company: Request for Approval) ORDER
of Tariff with less than Statutory Notice)

BY THE COMMISSION: On April 3, 1968, Concord Telephone Company filed Seventh Revised Sheet 2, Section 36, of its General Exchange Tariff and requested, by covering letter, approval of filing on less than statutory notice. The said tariff provides for a special service for the Collins & Aikman Corporation consisting of a 605 Key Strip modified to meet requirements for full period, WATS and data transmission service. It is represented that the subscriber has requested an early installation and, therefore, less than statutory approval is requested.

Upon consideration of the circumstances and conditions relied upon, the Commission is of the opinion that the covering letter should be considered as an application for authority to file this tariff on less than statutory notice; that the request should be granted and the tariff be received as filed to become effective on April 10, 1968.

IT IS THEREFORE ORDERED, that said tariff is hereby approved to become effective on April 10, 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-16, SUB 87

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Concord Telephone Company: Request for Approval) ORDER
of Tariff with Less than Statutory Notice)

BY THE COMMISSION: On November 18, 1968, Concord Telephone Company filed First Revised Sheet 3, Section 38, of its General Exchange Tariff and requested, by covering letter, approval of filing on less than statutory notice. The said tariff provides for a 400 Series Data Set. This service has been requested by Stanly County Hospital at Albemarle, North Carolina, and they desire the service at the earliest possible date. Concord Telephone Company has the equipment on order and expect delivery of same during the week of November 25, 1968.

Upon consideration of the circumstances and conditions relied upon and considering that rates in said tariff are identical with 400 Series Data Set equipment rates previously approved in another proceeding, the Commission is of the opinion that the covering letter should be considered as an application for authority to file this tariff on less than statutory notice; that the request should be granted and the tariff be received as filed to become effective on November 25, 1968.

IT IS THEREFORE ORDERED, That said tariff is hereby approved to become effective on November 25, 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-26, SUB 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Heins Telephone Company: Request for Approval) ORDER
of Tariff with Less than Statutory Notice)

BY THE COMMISSION: On October 25, 1968, Heins Telephone Company filed General Exchange Tariff Sheets and requested by covering letter approval of filing on less than statutory notice. The said tariff provides for Data Transmitting and Receiving Equipment. This service has been requested by Lee County Hospital and they desire the service on November 15, 1968. Heins Telephone Company has the equipment on hand for installation.

Upon consideration of the circumstances and conditions relied upon and considering that rates in said tariff are identical with Data Transmitting and Receiving Equipment rates previously approved in another proceeding, the Commission is of the opinion that the covering letter should be considered as an application for authority to file this tariff on less than statutory notice; and that the request should be granted and the tariff be received as filed to become effective on November 15, 1968.

IT IS THEREFORE ORDERED, That said tariff is hereby approved to become effective on November 15, 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-40, SUB 96

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Norfolk & Carolina Telephone & Telegraph)
Company: Request for Approval of Tariff with) ORDER
Less than Statutory Notice)

BY THE COMMISSION: On June 10, 1968, The Norfolk & Carolina Telephone & Telegraph Company filed an original local exchange tariff and an original exchange service area and base rate area map for a new exchange proposed to be established at Waves, North Carolina, and by covering letter requested approval of the filing on less than statutory notice. This tariff filing provides for the establishment of a new exchange with a separate base rate area which will provide the subscribers in the Waves area with service at a lesser rate than they are presently receiving as subscribers of the Buxton exchange. It is represented that the Company proposes to establish this new exchange on June 16, 1968, therefore less than statutory approval is requested.

Upon consideration of the circumstances and conditions relied upon, the Commission is of the opinion that the covering letter should be considered as an application for

authority to file this tariff on less than statutory notice; that the request should be granted and the tariff be received as filed to become effective on June 16, 1968.

IT IS THEREFORE ORDERED, That said tariff is hereby approved to become effective on June 16, 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of June, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. P-70, SUB 88

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
North Carolina Telephone Company: Approval of)
Local Exchange Tariff and Exchange Service) ORDER
Area Map with Less than Statutory Notice)

BY THE COMMISSION: By order dated December 13, 1968, in Docket P-70, Sub 85, the Commission required that the North Carolina Telephone Company adopt the local service tariffs of the Lilesville Telephone Company for the Lilesville subscribers who would become subscribers of the North Carolina Telephone Company as of five o'clock in the afternoon on December 31, 1968.

On December 19, 1968, the North Carolina Telephone Company filed Lilesville Local Exchange Tariff, Original Sheet 1, and Lilesville Exchange Service Map, Original Sheet 1, in response to the Commission's order dated December 13, 1968, in Docket P-70, Sub 85. The aforementioned tariff sheets bearing an effective date of January 1, 1969.

Upon review of the Lilesville Local Exchange Tariff Sheets filed on December 19, 1968, the Commission is of the opinion that such tariffs are in accordance with the Commission's order dated December 13, 1968, in Docket P-70, Sub 85, and that the subject tariff sheets should be approved on less than statutory notice with such tariff sheets to become effective for the Lilesville exchange of the North Carolina Telephone Company on January 1, 1969.

IT IS THEREFORE ORDERED, That said tariff sheets are hereby approved to become effective on January 1, 1969.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 555

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Southern Bell Telephone & Telegraph Company:)
Request for Approval of Tariff with Less than) ORDER
Statutory Notice)

BY THE COMMISSION: On April 8, 1968, Southern Bell Telephone and Telegraph Company filed Twelfth Revised Sheet 3, Section 4, and Original Sheet 13-A, Section 32, of its General Exchange Tariff and requested, by covering letter, approval of filing on less than statutory notice. The said tariff provides for a 305 Switching System which is designed for U. S. Air Force locations. It is represented that the subscriber has requested an early installation and, therefore less than statutory approval is requested.

Upon consideration of the circumstances and conditions relied upon, the Commission is of the opinion that the covering letter should be considered as an application for authority to file this tariff on less than statutory notice; that the request should be granted and the tariff be received as filed to become effective on May 1, 1968.

IT IS THEREFORE ORDERED, That said tariff is hereby approved to become effective on May 1, 1968.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-18, SUB 20
DOCKET NO. P-62, SUB 29
DOCKET NO. P-37, SUB 37
DOCKET NO. P-50, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Filing by Denton Telephone Company, Eastern)
Rowan Telephone Company, Mooresville Telephone)
Company, and Thermal Belt Telephone Company of) ORDER
Service Agreements with Mid-Continent Telephone)
Corporation)

HEARD IN: The Old Y.M.C.A. Building, Raleigh, North Carolina, March 6, 1968, at 10:00 a.m.

BEFORE: Commissioner Thomas R. Eller, Jr. (Presiding), and Commissioners M. Alexander Biggs, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Respondent:

W.T. Joyner, Jr.
Joyner and Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina

Nelson Woodson
Woodson, Hudson & Busby
Attorneys at Law
201 W. Council Street
Salisbury, North Carolina

Mr. George C. McConnaughey
George, Creek, King, McMahon & McConnaughey
Attorneys at Law
100 East Broad Street
Columbus, Ohio

For the Commission's Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

ELLER, COMMISSIONER: These proceedings, consolidated by consent, arise on the filing by Denton Telephone Company, Eastern Rowan Telephone Company, Mooresville Telephone Company, and Thermal Belt Telephone Company of separate, but substantially similar, contracts for managerial, engineering, operating, construction, and administrative services to be performed for each by Mid-Continent Telephone

Corporation, as the holding company beneficially owning and controlling the common capital stock of each.

The Commission, acting under the authority contained in G.S. 62-153 and related statutes, set and held public hearings (consolidated) as captioned.

General Statutes 62-153, as pertinent, reads as follows:

G.S. 62-153. "Contracts of public utilities with certain companies and for services. - (a) All public utilities shall file with the Commission copies of contracts with any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency, and when requested by the Commission, copies of contracts with any person selling service of any kind. The Commission may disapprove, after hearing, any such contract if it is found to be unjust or unreasonable, and made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the public utility. Such contracts so disapproved by the Commission shall be void and shall not be carried out by the public utility which is a party thereto, nor shall any payments be made thereunder.

(b) No public utility shall pay any fees, commissions or compensation of any description whatsoever to any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the Commission and obtaining its approval."

Having before it a number of such contracts of telephone companies and being of the opinion that all should be considered to some extent in pari materia for policy reasons, the Commission has until this time withheld ruling pending additional information and study in the premises.

Briefly, the contracts involved state in general terms those services which the operating companies may call upon the parent company to provide. Some of the services provided for are: (1) Executive assistance in respect of corporate, financial, operating, engineering, organization, regulatory, etc., duties; (2) Engineering services, both special and incidental; (3) Operating assistance in the operation, maintenance, and repair of all the operating company's facilities, both routine and emergency; (4) Construction planning, supervision, investigation, and monitoring; (5) Insurance programming, procurement, and placement; (6) Customer relations, including marketing, advertising, and public relations; (7) Legal; (8) Accounting, including bookkeeping, audits, property records, billing, and budgets; (9) Taxes, including advice, preparation and filing of returns and payments, and appearances before taxing authorities; (10) Employee Relations, including all forms of personnel and labor

matters, training of personnel, and administration of records; (11) Traffic, including all toll centers, central office, and line assistance; (12) Connecting company liason and relations; (13) Regulatory assistance including appearances before regulatory agencies, rate studies, cost and valuation studies and procedures, tariffs, etc.; (14) Archives, records and files procedures, repositories, etc.; and (15) Any other services called for by the operating company.

The contracts provide that Mid-Continent's charges for these services will be billed on a direct cost basis for any such services which can be identified and related directly to the requesting company without "excessive effort or expense." All other charges are to be billed on a simplified basis in relation to some factor identified with the service. To illustrate: (1) Executive, Legal, Engineering, Accounting, Customer Relations, Connecting Company Liason, Regulatory, Records and Files and other miscellaneous services not specifically provided for, and which cannot, "without excessive effort or expense, be identified and related to services rendered to a particular affiliate" are to be charged on the allocated basis of the operating company's total stations in service as of the preceding month; (2) Indirect financial services are to be allocated on the basis of holding company advances in the prior month; (3) Employee Relations Services are to be based on the relation of the operating company's total employees to the total; (4) Indirect Insurance Service Charges are to be on the basis of allocated gross insurance premiums in the prior year; (5) Indirect Traffic Charges are to be allocated on the basis of personnel in the traffic department; (6) Indirect Charges for Tax Services are to be on the basis of allocated proportion of taxes accrued for the preceding calendar year; and (7) General overhead of Mid-Continent (stenographers, typists, file clerks, rent, light, depreciation and general suppliers, and similar and related expenses) and Travel, Telephone, Telegraph, Postage, Stationery, Printing and all other "out-of-pocket expenses" are to be billed (where indirect) on the basis of a percentage to be developed and adjusted from time to time.

The four (4) operating companies involved are relatively small companies not otherwise having available to them some of the more sophisticated services offered them under their contracts with Mid-Continent. Indeed, there is reason to question their need for some of the services being offered them. However, the evidence before us does not justify a specific finding or conclusion that the contracts are "unjust or unreasonable, and made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of the public utility" so as to void actual expenditures made pursuant theretc. [G.S. 62-153]

The contracts are offensive primarily in their vagueness as to how indirect charges will be made and what their aggregate effect will be in transferring, concealing, or

dissipating each company's earnings for rate-making purposes. [See G.S. 62-(3) (23) (c)]

We are of the opinion and hold that the contracts, and each of them, assure some needed benefits to the small operating companies and that they should be approved for book purposes, but that, pending the accumulation of operating data and experience sufficient, judgment should be withheld on whether they do have the effect of concealing, transferring, or dissipating the earnings of the utility, or otherwise unnecessarily, unreasonably, or excessively affecting the company's rates for rate-making purposes.

Accordingly, IT IS ORDERED:

1. That the contracts of each of the captioned companies with Mid-Continent Telephone Corporation as before the Commission in this docket be, and each are hereby approved nunc pro tunc, for the purpose of permitting the expenditures related thereto and reflecting them upon each company's books; subject however, to later determination by the Commission on its own motion, or otherwise, whether and, if so, to what extent, such expenditures are necessary, reasonable, and just for inclusion in making rates for each company.

2. It is expressly and specifically provided, however, that the operating companies and Mid-Continent Telephone Corporation shall keep accurate, separate, records of all expenditures made pursuant to the contracts herein conditionally approved and shall submit the results of said studies to the Commission at any time upon its request made in writing on ten (10) days' notice.

3. A further specific condition of this approval is that in any subsequent rate proceeding before this Commission by either of said operating companies, the justness and reasonableness of all payments, fees, and charges made to Mid-Continent Telephone Corporation by such utility pursuant to these contracts, or otherwise, shall be an issue in said proceedings with the burden of proof upon the utility, and this order shall not be pleaded in bar of such investigation, issue, or inquiry.

4. A copy of this consolidated order shall be separately placed and retained in each captioned docket file.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-9, SUB 95

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Filing by United Telephone Company of the Carolinas, Inc., of a Service Agreement with United System, Inc.) ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on November 7, 1968, at 10:00 A.M.

BEFORE: Chairman Harry T. Westcott, (Presiding); and Commissioners Thomas R. Eller, Jr., John W. McDevitt, M. Alexander Biggs, Jr., and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicants:

Wade Barber
Barber & Holmes
Attorneys at Law
P.O. Box 126, Pittsboro, North Carolina

For the Commission's Staff:

Edward B Hipp
Commission Attorney
N.C. Utilities Commission
P.O. Box 991, Raleigh, North Carolina 27602

Larry G. Ford
Associate Commission Attorney
N.C. Utilities Commission
P.O. Box 991, Raleigh, North Carolina 27602

ELLER, COMMISSIONER: These proceedings arise on the filing by United Telephone Company of the Carolinas, Inc., of a Petition seeking approval of transactions, fees, commissions, and compensations made and to be made to managing, engineering, financing, purchasing, and service companies and agencies with which Petitioner is affiliated in the system of United Utilities, Inc., of Westwood, Kansas.

The principal statute involved is G.S. 62-153, in pertinent part providing as follows:

G.S. 62-153. "Contracts of public utilities with certain companies and for services. - (a) All public utilities shall file with the Commission copies of contracts with any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency, and when requested by the Commission, copies of contracts with any person selling service of any kind.

The Commission may disapprove, after hearing, any such contract if it is found to be unjust or unreasonable, and made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the public utility. Such contracts so disapproved by the Commission shall be void and shall not be carried out by the public utility which is a party thereto, nor shall any payments be made thereunder.

(b) No public utility shall pay any fees, commissions or compensation of any description whatsoever to any affiliated or subsidiary holding, managing, operating, construction, engineering, financing or purchasing company or agency for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the Commission and obtaining its approval."

Deeming the matter one affecting the public interest, the Commission scheduled and held public hearings as captioned. The Commission's Staff made extensive study of the agreement between Petitioner and United System Service, Inc., which agreement contains the principal basis for the transactions sought to be approved. The Company and its affiliates supplied substantial data as requested by the Staff.

United Utilities, Inc., a holding company, is the owner and holder of the common capital stock of United Telephone Company of the Carolinas, Inc., as well as a number of operating telephone companies in various other states. It also is the owner and holder of the common capital stock of United System Service, Inc., which company performs inclusive management, technical, legal, financial, administrative, and purchasing services for the United System companies. Petitioner, through common stock ownership and interlocking directors and management is, in effect, operated as a division of United Utilities, Inc., as is United System Service, Inc.

The contract submitted for approval provides for United System Service, Inc., to provide to United Telephone Company, Inc., on the latter's request, every conceivable service coming within the utility's corporate purposes.

The contract, which is apparently standard for all United System operating companies, provides that: (a) All specifically identifiable costs of particular services rendered for any single United System Company shall be charged to and paid by that company; (b) All specifically identifiable costs for particular services rendered for more than on United System Company, but not all such companies, shall be charged to and paid by the companies for which the services are rendered, with any costs not separately ascertainable to be "allocated fairly" among all such companies receiving the service; (c) All costs associated with the general administration of United System Service, Inc. (which includes the salaries, expenses, headquarters expense, clerical, etc. of the holding company not directly

assigned to acquisition matters and the like) and incurred for all services performed for or furnished to all United System companies "on an equitable basis." As to the formula for allocation of these costs the contract provides:

"...Such allocation shall be in accordance with a formula or formulae based on one or more factors; such as, plant investment, capitalization, operating revenues, operating expenses, employees, customers or telephones served or a combination of any or all of such factors (and which may be revised from time to time as necessary) which, in the considered judgment of the officers responsible for making the allocation, will result in charges to each United System company as nearly as practicable equal in amount to the actual costs incurred in rendering services for that company."

The contract provides for monthly billing of costs provided as described.

The condition of the record and of the contract does not permit a definitive finding and conclusion on the issue of whether the amounts to be collected by the affiliated company, particularly those under item (c) above, are unjust or unreasonable for rate-making purposes and whether they will have the effect of concealing, transferring, or dissipating the earnings of the public utility and will have an unnecessary and adverse effect on the public utility's rates. However, the evidence does not justify voiding the agreement and transactions and preventing the entry of results therefrom on the books of the utility. [G.S. 62-153 (a)]

The Commission, therefore, concludes that the contract should be granted approval for book purposes and should allow time for the accumulation of experience and cost and revenue data associated with the transactions involved before granting approval for rate-making purposes.

Accordingly, IT IS ORDERED:

1. That the contract attached to and made a part of the Petition in this docket, and the transactions and costs pertaining to said contract, be and the same hereby are, approved for the purpose of allowing said transactions to be made and entered upon the books of United Telephone Company of the Carolinas, Inc.

2. It is specifically provided, however, that the approval herein granted is expressly conditional and subject to further investigation and findings by the Commission on its own motion, or otherwise, as to whether the aggregate amounts of expenditures made pursuant to such contract, or otherwise - if made to an affiliated company - are necessary, just, and reasonable in the effect they have upon the rates or service of United Telephone Company of the Carolinas, Inc. In any such further proceeding involving

the rates of Petitioner, the burden shall remain upon the Company to establish that all such charges and compensations paid to affiliated companies are necessary to meet its utility needs, are not in excess of those charges which would obtain under arms-length bargaining, and are not otherwise so excessive as to require adjustments eliminating them from consideration for rate-making purposes.

3. Petitioner shall keep and maintain accurate current records of all sums paid affiliated companies, the source of such billings, and the purpose thereof. Such records shall be made available to the Commission on ten (10) days notice in writing that the Commission desires to examine and review them.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-58, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Western Carolina Telephone Company, Westco Telephone Company, and Continental Telephone Corporation - Order to Show Cause and General Investigation	) THIRD) INTERIM) ORDER)

HEARD IN: Conference Held in Main Federal District Courtroom, United States Post Office Building, Asheville, North Carolina, on December 19, 1967, at 9:00 A.M.

BEFORE: Chairman Harry T. Westcott and Commissioners Thomas R. Eller, Jr., John W. McDevitt, Clawson L. Williams, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Respondents:

Herbert L. Hyde and Emerson D. Wall
Van Winkle, Walton, Buck & Wall
Attorneys at Law
18 1/2 Church Street, P.O. Box 7376
Asheville, North Carolina

For the Intervenors:

George A. Goodwyn
Assistant Attorney General
Justice Building
Raleigh, North Carolina
For: The using and consuming public

Robert R. Williams, Jr.
Williams, Williams and Morris
Attorneys at Law
P.O. Box 7316, Asheville, North Carolina 28804
For: The using and consuming public

For the Commission's Staff:

Edward B. Hipp
Commission Counsel
P.O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: This proceeding arises from the general Order of Investigation entered herein on March 20, 1967. Following hearings held in Asheville, N.C., on July 14, 1967, and Raleigh, N.C., on August 8, 1967, the Commission entered an Interim Order on August 31, 1967, setting forth acts and procedures required of the respondents pursuant to said investigation to improve telephone service in their respective service areas. Pursuant to said Interim Order the respondents filed certain reports with the Commission on September 27, 1967, October 16, 1967, and October 30, 1967, as required by said Interim Order, showing progress on repairs to date and plans for proposed improvements. On November 10, 1967, the Commission entered an Order setting a conference on said progress reports to be held in Asheville, N.C., on December 19, 1967, for consideration and determination whether it shall give approval to said filings.

The November 10, 1967, Order required additional information to be submitted in support of said filings in advance of the December 19, 1967, conference. The Commission Staff made field investigations of much of the work under progress by the respondents in compliance with the August 31, 1967, Order. The Staff reports of such field investigations were compiled and filed in the proceeding and copies served on the respondents. The Order of November 10, 1967, setting the conference set forth in detail all areas in connection with the progress reports in which the Commission desired additional proof or data in support of the filings.

All parties of record appeared at the Asheville conference. The respondents offered in evidence the testimony of all officers of the respondent corporations setting forth the progress of the respondent companies in improving the service in their service areas in western North Carolina. All of the company officers and managers

were made available for questions from the Commission and parties of record. The data and supplementary filings required by the Order setting the conference were made a part of the record of the conference, together with the results of the Staff investigations.

The respondents reported the following actions to improve service:

1. From August 31, 1967, to December 19, 1967, Westco had commenced $1,982,444 in construction to improve service, Western Carolina had commenced $1,080,000, for a total respondents' construction started during the period of $3,072,984. The total telephones installed on August 31, 1967, was 28,747 stations, and this had been increased or improved by 5,564 new installations or regrades, and held orders had increased from 287 on August 31, 1967, to 979 in December 1967.

2. Of the "B" Loan exchanges in the Westco service area all exchanges had converted more than 90% of the customers to four or five party multiparty service, with Hot Springs having 100% conversion, and all of these seven exchanges to have an average of 96% conversion by December 31, 1867. Under the "A" Loan Agreement, Fontana had been converted to four party service and Western Carolina had converted Cherokee and Andrews to five party multiparty service.

3. Employee training had begun in the Communication Cable School referred to as the D.O. Creaseman Company School in Chandler, N.C.

4. All exchanges had received preliminary cleaning up of dead jumpers and other substandard daily maintenance of the central office equipment, 13 exchanges had been routined, and testing had begun in routining of the remaining exchanges.

5. The temporary repairs in outside plant had been reworked to make permanent repairs and testing had begun on improving operation of the outside plant.

6. The 1867 program of installing phones used for emergency services had been completed.

7. Personnel employed by the companies had increased from 195 in April 1967 to 243 on December 19, 1967, with additional positions authorized to be filled as soon as qualified applicants were found. A total of 50 new job positions were established by the September 30, 1967, filing, 26 of which had been filled on December 19, 1967.

8. Of the 1,051 complaints submitted at the original Asheville hearings the respondents had contacted or made effort to contact all Complainants and had reported the

complaints satisfied or included in the proposed construction projects for satisfaction in the future.

9. The respondents have replaced the former principal officers of Western and Westco with a new president, vice president in charge of operations, and several new commercial managers and district managers with extensive experience in the management and operation of telephone companies and telephone exchanges in other areas, and the new management has instituted new programs for improvement of service and has complied with all requirements of the Commission for submittal of plans for the general renovation and improvement of service in the respondents' service area.

10. New technical personnel and additional splicers, installer-repairmen, toll operators and maintenance personnel have been added and are either on the job or in training for assignment to new jobs and under proper management should greatly improve the maintenance program of the company.

11. New construction crews and routining crews have been brought into the respondents' service areas to routine central office equipment and to repair or rehabilitate all outside plant which are believed to be a major source of the complaints of poor service in respondents' service area.

12. On December 1, 1967, respondents filed construction and operating budgets showing the following proposed new construction for plant and extensions of lines and reinforcing of lines as follows:

	Western Carolina	Westco
1967	$1,329,573	$ 483,291
1968	$2,515,591	$2,290,191
1969	$1,588,384	$1,019,073
1970	$1,719,566	$ 610,301

The above construction budgets show in detail each work order number and the installation of the project for the above total construction amounts showing the construction schedule for each quarter in 1968 and the total year for 1969 and 1970.

13. Filings of the company show the schedule for installation of direct distance dialing in each exchange for completion dates extending through 1970. The filings for intercept service in the various exchanges have completion dates extending through 1968. These programs require that equipment must be ordered considerably in advance of installation. These construction programs appear to promise relief from many of the complaints received at the hearing.

The Commission Staff reported its investigation of the 17 exchanges where renovation had been commenced, (out of a total of 28)

and filed written reports in the record showing the condition of the 17 exchanges.

The Commission received testimony from representatives of the using and consuming public in Hayesville and Bryson City, reporting some continuing complaints at these exchanges and some improvement in services at these exchanges. Additional Staff witnesses reported on investigations of the conditions of exchanges before and after the June 1967 hearing, the planning and training program of the respondents, the budgeting and purchasing program and new installation of telephones and the result of surveys of the complaints against the respondents.

Subsequent to the December 1967 conference the Commission Staff has made further inspections of the complaints received by the Commission which have been served on the respondents and the respondents have reported that the complaints have either been corrected or are scheduled for correction in the above construction program over the next three years.

CONCLUSIONS

The Commission concludes from all of the testimony that initial progress has been made in the improvement of service in the Western Carolina and Westco Service areas, but that a substantial amount of the complaints of inadequate service will not be satisfied until the full three-year construction program proposed in the subject filings has been completed and put in operation. Much of the fine detail in record keeping and testing of central office equipment and outside plant cannot be performed wisely on a crash basis. Many of the troubles reported by the respondents' subscribers result from insufficient main trunks and central office equipment which must be ordered and custom designed and custom built, and due to the national backlog of communications equipment orders, cannot be secured on an immediate basis. Many of the other troubles reported result from insufficient maintenance extending for a two-year period prior to the Order of Investigation and results from inadequate maintenance personnel. These necessary additional maintenance personnel are being employed as they become available in the area and the evidence indicates that the respondents have developed a training program which should improve this maintenance in the months ahead.

The Commission's Order of August 31, 1967, places the burden on the respondent companies to undertake extensive measures to improve service in their service areas and the subject of the instant Order is the consideration of the plans for this work, together with a review of such work as has been done during the period from August 31, 1967, through December 19, 1967.

The Commission is of the opinion that the basic plans and filings set for consideration in this conference should be

approved insofar as they pertain to work projects proposed to be done, with certain exceptions set forth below, and that such work and such projects should proceed in the earliest feasible manner to complete the improvements required by said Order.

Subsequent Events

On January 31, 1968, the Grand Jury of Buncombe County returned true bills of indictments against the respondents Western Carolina and Westco and three of their officers and employees, and others, relating to charges of conspiracy to fix prices and illegal restraint of trade arising from construction work, between the respondents and three of their then officers and employees, and the R. & G. Construction Company and its president. The Utilities Commission takes public and judicial notice of this pending criminal proceeding to the extent such acts have a bearing upon the approval of certain personnel positions and contracts of the respondents with said former officers and employees and with the legal rights of the respondents to recover any monies wrongfully paid by respondents to said R. & G. Construction Company or said officers and employees. Pending the outcome of said indictments or further proceedings in this cause, the Commission withholds approval of said filings of personnel reorganization insofar as they relate to the said officers and employees named in said indictment.

The Commission further holds in abeyance the approval of the contracts for services between the respondents Western Carolina Telephone Company and Westco Telephone Company and their parent corporation, Continental Telephone Corporation.

The Commission is further of the opinion that the matters and things at issue in said bills of indictment against respondents should be investigated by the respondents, and to the extent that any cause of action arises for the respondents to recover damages for the performance of said alleged violations of law and to recover any sums of money wrongfully paid or procured to said R. & G. Construction Company or by any former employees of the respondents in conflict of interest with the respondents' employment, all as more fully set forth hereafter in the ordering provisions of this Order.

Accordingly, it is Ordered as follows:

FILINGS APPROVED

1. The following parts of the filings made on September 27, 1967, as supplemented by the additions thereto filed herein on December 7, 1967, are approved:

(a) Administrative Procedure Manual
(b) Direct Distance Dialing
(c) Microwave Circuits

(d) Employee Training Program
(e) Central Office Equipment - Routine Testing
(f) Plant Facility Routine Testing
(g) Projects for the Remainder of 1967
(h) Area Coverage, Zone Rates and Upgraded Service
(i) Personnel Positions
(j) Contract Systems
(k) Assignment Bureau

2. The filing and report made on October 16, 1967, as supplemented by the addition thereto on December 7, 1967, relating to intercept service at each exchange is approved.

3. The filings and reports made on October 30, 1967, as supplemented by the additional requirements on December 8, 1967, are approved as follows:

(a) Progress of Installing Telephones
(b) Area Coverage Design and Area Coverage Maps
(c) Complaint Reports, Subject to Final Satisfaction of Such Complaints
(d) A Report on Status of Plant Records

MATTERS HELD IN ABEYANCE

4. The personnel structure and organizational charts of the respondents as filed on September 27, 1967, and as supplemented by the additions filed on December 7, 1967, are hereby approved, except that the positions relating to the officers and employees and the former officer named in the above referred to indictment in Buncombe County are held in abeyance subject to the indictment proceedings instituted and to such other proceedings as may be made a part of this proceeding, including the matter of contract and salary for the said former president filed as a consultant.

5. The intercompany contracts for parent-subsidiary services between the respondents and affiliates of the respondents filed on September 27, 1967, are hereby held in abeyance pending the indictment proceedings in Buncombe County under Chapter 75 of the General Statutes, and such further proceedings relating thereto as may be made a part of this proceeding.

6. The 1968 construction and operating budgets of the respondents Western Carolina and Westco filed on December 1, 1967, are approved subject to periodic review upon request or motion by any party hereto, and subject to proper accounting treatment of all expenditures carried in the operating budgets under the various listings as Rehabilitation of Station Installations, Rehabilitation of Outside Plant, Routine Central Office Equipment, Routing PBX, Rebuild Outside Plant, Routine Central Office Equipment - Toll, and such other items listed as Plant Additions, in compliance with the Uniform System of Accounts as to separations between maintenance and capital expenditures. The accounting treatment of such expenditures representing

the crash maintenance program of the respondents is held in abeyance pending further presentation by the respondents of the details of such maintenance. The Commission has received a letter request of respondents dated February 14, 1968, requesting approval for deferred accounting treatments of such maintenance to spread this cost over a 5-year period beginning in 1967 and the Commission has advised respondents that such approval cannot be granted upon the basis of the information contained in the letter request and that if respondents desire further consideration of such deferred accounting treatment that a petition be filed containing a detailed statement of the nature of the work performed in each instance, with particular information as to such work required to rehabilitate or renovate substandard construction work by any outside contractor for the respondents. Except for the accounting treatment of such maintenance charges the said construction and operating budgets are approved.

OTHER MATTERS

7. The Commission disapproves all matters not expressly approved or held in abeyance above.

8. The respondents are hereby directed to submit to the Commission on or before April 15, 1968, a detailed analysis of work performed for the respondents Western Carolina Telephone Company and Westco Telephone Company by R. & G. Construction Company, showing any deficiency in the work performed by said company under said contracts or additions thereto, and to set out such acts or damages as respondents may complain of to recover to the respondents any amounts paid to R. & G. Construction Company or any amounts received directly or indirectly by any of the involved officials of the respondents for work established to be substandard, whether directly or indirectly resulting from the conspiracy alleged in said indictment under Chapter 75 of the General Statutes or otherwise or for any fraudulent or otherwise wrongfully invoiced amounts for work alleged to have been done by said R. & G. Construction Company, and to recover in full damages at law for any fraud in paying or receiving Commercial bribes in violation of G.S. 14-253.

9. That the respondents appear in this proceeding for a hearing in Raleigh, N.C., on May 1, 1968, in the Commission Hearing Room, Old Y.M.C.A. Building, Corner Edenton and Wilmington Streets, Raleigh, N.C., at 10:00 o'clock a.m. and be prepared to show cause why they should not be required to bring such actions for damages or for accounting or for any other cause of action to recover all sums and damages recoverable by the respondents arising from the construction work performed for the respondents by the R. & G. Construction Company and for all other matters and things arising from the acts alleged in the proceedings brought in Buncombe County against respondents and others for violation of Chapter 75 of the General Statutes.

10. That the respondents are hereby ordered to make available to the Staff employees and authorized agents of the Utilities Commission in accordance with G.S. 62-31 3 for examination, inspection and reproduction, all of its books, records, accounts and documents and its plant, property, and facilities for investigation of all such records, data, plant or any evidence thereof as to the work performed for said respondents by R. & G. Construction Company and all purchase orders, work orders, and job order numbers and records for all such work and for purchase of all materials purchased by respondents for use in all such work orders, work project orders and job orders related to transactions directly or indirectly with R. & G. Construction Company and for the inspection of all said work anywhere in the service area of the respondents, and the representatives, agents and employees of the Commission are authorized and directed to make inspection of such books, records, accounts, documents, plant, property and facilities and to report fully to the Commission in this proceeding all matters and things found from said inspection and investigation relating to contracts, agreements, or transactions of any matter whatsoever with R. & G. Construction Company or for the purchase of materials by respondents for use in such contracts or other transactions with R. & G. Construction Company.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of A, M & H Co., Inc., 1740 East Independence Boulevard, Charlotte, North Carolina, for a certificate of public convenience and necessity authorizing it to own, construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Bahia Bay, Mecklenburg County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on March 1, 1968

BEFORE: Commissioners M. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Kenneth R. Downs
Attorney at Law
715 Law Building
Charlotte, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on January 15, 1968, by A, M & H Co., Inc., of Charlotte, North Carolina, wherein the applicant seeks a certificate of public convenience and necessity to own, construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Bahia Bay located near Charlotte, North Carolina, which area is more specifically described in Applicant's Exhibit No. 4 herein, to which reference is made for complete description.

The application came on for hearing at the time and place above mentioned pursuant to notice of hearing issued by the Commission on January 25, 1968. At said hearing evidence was adduced consisting of oral testimony and certain documentary evidence.

FINDINGS OF FACT

Based upon the evidence thus adduced, the Commission finds the following facts:

1. That the applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office in Charlotte, North Carolina.

2. That the applicant proposes to install and operate water wells, pumps, supply lines and metering equipment, and to distribute and sell water through said facilities to the residents of Bahia Bay Subdivision as shown on map identified as Applicant's Exhibit No. 4 entitled "Topographic Survey and Subdivision Plan, Property of A. M. & H. Realty, Inc., Lemley Twsp., Mecklenburg Co., N.C.", dated October 15, 1965, by Keith R. Moen, Registered Surveyor.

3. That the applicant now serves approximately two residences in said subdivision but has open at this time approximately 124 lots which are listed for sale.

4. That the applicant has submitted detailed plans for its existing water system to the State Board of Health, which plans and specifications have been approved by said Board.

5. That the applicant has submitted samples of water taken from its existing wells, which water has been found to conform to the standards of the U.S. Department of Health for drinking water.

6. That applicant has made arrangements for the maintenance and upkeep of said water system.

7. That said subdivision is located outside the corporate limits of any municipality and beyond the reach of any existing water system, and the water supply which applicant proposes to furnish to the residents of said subdivision is the only available water supply.

8. That the wells, pumps, tanks, pipes and metering equipment that comprise said water system have been contributed to the applicant-corporation as unencumbered capital assets, although the lands upon which said system is laid out are subject to certain encumbrances.

9. That the applicant is in all respects fit, willing and able to provide water service in the area described above.

CONCLUSIONS

Based upon the foregoing Findings of Fact, the Commission concludes that there is a demand and need for water service in the area shown on the map above referred to, which need

and demand cannot be filled or met by any other supplier, and that the public convenience and necessity will be served by the granting of a certificate of public convenience and necessity to the applicant.

IT IS, THEREFORE, ORDERED that A, M & H Co., Inc., of Charlotte, North Carolina, be and it is hereby granted a certificate of public convenience and necessity to construct, own and operate a water system and to distribute therefrom water in those areas of Bahia Bay Subdivision shown on the map filed with the Commission marked Applicant's Exhibit No. 4, which reference is made for more complete description.

IT IS FURTHER ORDERED that the applicant, prior to connecting any additional wells to the water system presently installed in said subdivision, shall first obtain from the North Carolina State Board of Health an approval of the plan and design of said well and shall submit samples of the water from said well for bacteriological and chemical analyses, the results of which analyses must indicate that said water conforms to the minimum standards prescribed by the U.S. Department of Health for drinking water before same is permitted to flow into the system, with documentary evidence of said approval and water analyses to be filed with the Commission.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission, and that it shall otherwise comply in all respects with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a schedule of rates to be charged to customers purchasing water from it, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this order shall in and of itself constitute a certificate of public convenience and necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-228

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of J.J. Brindle, d/b/a Brindle Well Drilling, Pinkney Station, Gastonia, North Carolina, for a Certificate of Public Convenience and Necessity to Construct, Operate and Maintain a Water System in Gaston County, North Carolina, and for Approval of Rates	ORDER GRANTING APPLICATION

HEARD IN: Commission's Hearing Room, Old Y.M.C.A. Building, Raleigh, North Carolina, on January 31, 1968, at 2:00 p.m.

BEFORE: Commissioner Thomas R. Eller, Jr.

APPEARANCES:

For the Applicant:

J.J. Brindle
Pinkney Station
Gastonia, North Carolina
For: Himself

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

ELLER, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on August 16, 1967, by J.J. Brindle, d/b/a Brindle Well Drilling, P.O. Box 2094, Pinkney Station, Gastonia, North Carolina, wherein applicant seeks a Certificate of Public Convenience and Necessity for the sale and distribution of water in the Lakewood Subdivision located in Gaston County, North Carolina, approximately four miles east of Gastonia adjacent to Robinwood Road as shown on map marked Exhibit 1 attached to the application. Among the other exhibits attached to the application was a schedule of proposed rates identified as Exhibit C which schedule was amended by the applicant in the transcript as follows:

First 6,000 gallons..... $.90 per thousand (Min. $.50)
All over 6,000 gallons..... $.60 per thousand
Connection Charge..... $1.00

Notice of hearing setting forth time and place for consideration of this application and stating the proposed water rates was duly published in the Gastonia Gazette, Gastonia, North Carolina, and this cause came to be heard at the time and place specified in the notice. At said hearing

evidence was heard consisting of the testimony of the applicant and of certain documentary exhibits.

Based on the evidence received at the hearing and the verified statements contained in the application and the attachments thereto, which are uncontroverted, the Commission makes the following

FINDINGS OF FACT

1. That the applicant is an individual, operating as a proprietorship, with his principal office at 3610 Little Mountain Road, Gastonia, North Carolina.

2. That the applicant owns, operates and maintains wells, water pumps, water supply lines and distributes water to 28 customers in the Lakewood Subdivision, Gastonia, North Carolina, which subdivision consists of approximately 40 lots.

3. That the applicant has submitted detailed plans for his water system which plans have been submitted to the North Carolina State Board of Health for approval. That the North Carolina State Board of Health at the time of hearing and since has not approved the said system.

4. That the applicant is a well driller and has been in this business since 1952 and proposes to carry on the maintenance and operation of this system by himself.

5. That the applicant has collected approximately $1,200 in revenues for the ending 1967 and has invested in the water system approximately $3,300 excluding cost of the well sites.

6. That the applicant is in all respects fit, able and willing to continue to provide the water service in the area described in Applicant's Exhibit 1.

Based on the above findings of fact, the Commission makes the following

CONCLUSIONS

The Commission concludes that there is a demand and need for water service in the Lakewood Subdivision, which need and demand cannot be met adequately by any other supplier, and that public convenience and necessity will be served by the granting of a Certificate of Public Convenience and Necessity to the applicant.

IT IS, THEREFORE, ORDERED that J.J. Brindle, d/b/a Brindle Well Drilling be and is hereby granted a Certificate of Public Convenience and Necessity to construct, own and operate a water system and to distribute water therefrom for compensation in the Lakewood Subdivision, Gastonia, North

Carolina, as shown on Exhibit 1 attached to the application and made a part hereof by reference.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the system and accounts adopted by this Commission and that it shall otherwise comply in all respects with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a consolidated annual report in accordance with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the schedule of rates as amended listed below is hereby to be filed as tariff schedule under G.S. 62-138, which schedule of rates is hereby authorized to become effective on one day's notice:

First 6,000 gallons..... $.90 per thousand (Min. $2.50)
All over 6,000 gallons.... $.60 per thousand
Connection Charge..... $100

IT IS FURTHER ORDERED that J.J. Brindle, d/b/a Brindle Well Drilling shall file within ninety (90) days from the date of this order a copy of the Board of Health's approval of this water system. Applicant's failure to perform all acts necessary to obtaining the approval of the State Board of Health as herein required within the time allowed shall render him subject to proceedings for contempt for failure to comply with this order.

IT IS FURTHER ORDERED that this order in itself shall constitute a Certificate of Public Convenience and Necessity for the operation of said water system described herein.

IT IS FURTHER ORDERED that this order shall remain open for receipt of the Board of Health's approval or for such further orders of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-232

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Cape Fear Water Company, Fayetteville, North Carolina, for a certificate of public convenience and necessity authorizing it to construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Hollywood Heights, Cumberland County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on February 27, 1968, at 10:00 a.m.

BEFORE: Commissioners M. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:
Herbert H. Thorp
Rose and Thorp
Attorneys at Law
P.O. Box 1239, Fayetteville, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on April 17, 1967, by Cape Fear Water Company, of Fayetteville, North Carolina, wherein the applicant seeks a certificate of public convenience and necessity to construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in a portion of an area known as Hollywood Heights located near Fayetteville, in Cumberland County, North Carolina, which area is more specifically described in Applicant's Exhibit B-1 filed with the Commission in this cause.

Brookwood Water Corporation, Fayetteville, North Carolina, was allowed to intervene in this cause on April 28, 1967, but upon motion filed by it on February 26, 1968, it was granted leave to withdraw as an intervenor, and at the time the cause came on for hearing no objection or protests were

offered to the granting of the application by it or any other person or firm.

The application came on for hearing at the time and place above mentioned pursuant to notice of hearing issued by the Commission on January 5, 1968. At said hearing evidence was adduced consisting of testimony of witnesses and certain documentary exhibits.

FINDINGS OF FACT

Based upon the evidence thus adduced, the Commission finds the following facts:

1. That the applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office in Fayetteville, Cumberland County, North Carolina, and with the following principal managing officers: President, Thomas Wood, Fayetteville, North Carolina; Vice President, J.P. Riddle, Fayetteville, North Carolina; and Secretary-Treasurer, William L. Oden, Fayetteville, North Carolina.

2. That the applicant proposes to install and operate water wells, pumps, supply lines and metering equipment, and to distribute and sell water through said facilities to the residents of Section 6 of Hollywood Heights Subdivision and subsequent sections thereof, as shown on map identified as Applicant's Exhibit B-1 entitled "Water Distribution Plan, Hollywood Heights, Seventy-First Township, Cumberland County, North Carolina," dated March, 1967 and prepared by John S. Collie, Registered Engineer, Fayetteville, North Carolina, to which reference is hereby made for a more perfect description of the area to be served and of the water supply facilities through and with which service is to be afforded.

3. That the applicant now serves approximately 80 residences in said subdivision and anticipates that it will ultimately serve approximately 180 residences when the subdivision is completely developed.

4. That applicant has submitted detailed plans for its existing water system to the State Board of Health, which plans and specifications have been approved by said Board. At this time the applicant is drilling a second well to be designated Well No. 2, the site for which has been verbally approved by the Cumberland County Health Department. The installation plans for Well No. 2 will be similar to that prescribed for Well No. 1, which is presently in operation and has been approved, and the applicant proposes to obtain approval of the State Board of Health for said Well No. 2 prior to the time that it is connected to its present system.

5. That the applicant has submitted samples of water taken from its Well No. 1, which water has been found to be

suitable for human use and consumption except that the water has too much acidity and must be treated in order to conform to the standards of the U.S. Department of Health for Drinking Water. The applicant proposes to provide the treatment necessary to eliminate said acid condition.

6. That applicant has made arrangements for the maintenance and upkeep of said water system.

7. That said Hollywood Heights Subdivision is located outside of the corporate limits of any municipality and beyond the reach of any existing public water system, and the water supply which applicant proposes to furnish to the residents of said subdivision is the only available central water supply.

8. That the pumps, tanks, pipes and metering equipment that comprise said water system have been contributed to the applicant-corporation as unencumbered capital assets, and the lot upon which Well No. 1 is located has been purchased by the corporation at a price of $2,500. The pumps, pipes and meters hereafter needed for the operation of said water system will also be contributed as unencumbered capital assets, and future well sites will be purchased by the corporation at a price of $2,500.

9. That the applicant is in all respects fit, able and willing to provide water service in the area described above.

CONCLUSIONS

Based upon the foregoing Findings of Fact, the Commission concludes that there is a demand and need for water service in the area shown on the map above referred to, which need and demand cannot be filled or met by any other supplier, and that the public convenience and necessity will be served by the granting of a certificate of public convenience and necessity to the applicant.

IT IS, THEREFORE, ORDERED that Cape Fear Water Company, of Fayetteville, North Carolina, be and it is hereby granted a certificate of public convenience and necessity to construct, own and operate a water system and to distribute therefrom water in those areas of Hollywood Heights Subdivision shown on the map filed with the Commission marked Applicant's Exhibit B-1, which reference is made for more complete description.

IT IS FURTHER ORDERED that the applicant shall provide and maintain in said water system such treatment as may be needed to reduce the acidity of the water and to make it otherwise conform to the standards of the U.S. Department of Health.

IT IS FURTHER ORDERED that the applicant, prior to connecting any additional wells to the water system

presently installed in said subdivision, shall first obtain from the North Carolina State Board of Health an approval of the plan and design of said well and shall submit samples of the water from said well for bacteriological and chemical analyses, the results of which anaylses must indicate that said water conforms to the minimum standard prescribed by the U.S. Department of Health for Drinking Water before same is permitted to flow into the system, with documentary evidence of said approval and water analyses to be filed with the Commission.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission, and that it shall otherwise comply in all respects with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a schedule of rates to be charged to customers purchasing water from it, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this order shall in and of itself constitute a certificate of public convenience and necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-201, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of W.E. Caviness, t/a Touch and Flow Water Systems, 118 Poplar Street, Jacksonville, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Service in the Crown Point Subdivision, Onslow County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER

HEARD IN: The Temporary Offices of the Commission, Corner of Edenton and Wilmington Streets, Raleigh, North Carolina, February 14, 1968

BEFORE: Commissioner Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Robert E. Lock
Attorney at Law
P.O. Box 592, Jacksonville, N.C.

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

WILLIAMS, COMMISSIONER: The nature of this proceeding is shown in the caption. Proper notice of hearing was given as directed by the Commission. No protests were received to the granting of the application or the approval of the proposed rates.

Based on the evidence produced at the hearing and the sworn statements attached to the application, the Commission makes the following

FINDINGS OF FACT

1. That W.E. Caviness is an individual trading as Touch and Flow Water Systems with mailing address at 118 Poplar Street, Jacksonville, North Carolina, and is engaged in the public utility business of furnishing water service.

2. That the applicant, by application filed with the Commission on December 7, 1967, is seeking a Certificate of Public Convenience and Necessity to provide water service to Crown Point Subdivision, Swansboro Township, Onslow County, North Carolina, and proposes to provide water service to some 172 lots in said subdivision as shown on Exhibit "A" of the application, and to that end applicant has entered into a contract, dated January 10, 1968, between the applicant and Crown Point Development Corporation for the provision of said services to said subdivision, which contract is duly filed with the Commission as an exhibit of the applicant.

3. That the applicant has drilled in the Crown Point Subdivision one well, designated as Well No. 1, located on Lot 29 as shown on Exhibit "A." At a later time applicant proposes to drill another well to be installed on Lot 161 and both well sites have been approved by the North Carolina State Board of Health. The chemical quality of the water from Well No. 1 as shown on the report filed with the Commission by the North Carolina State Board of Health Laboratory is satisfactory and meets the chemical requirements of the United States Public Health Service for drinking water.

4. That Well No. 1 yields approximately 260 gal. per min. and is equipped with a pump capable of pumping 200 gal. per min. That storage capacity is to be provided by a 40,000 gal. hydropneumatic tank, which will have storage capacity adequate to provide the proposed 172 houses with a sufficient supply of water under adequate pressure.

5. That Well No. 1 can reasonably meet the requirements for water service of the customers to be served but that Well No. 2 should be installed and connected into the system to insure reliability of service in the event of pump or other failure of Well No. 1.

6. That the distribution system installed and to be installed by the applicant is a 6 in. asbestos looped system with 2 in. galvanized laterals which will have an average pressure of approximately 50 PSI, and applicant's water system plans have been approved by the North Carolina State Board of Health.

7. That Crown Point Development Corporation, the owner-developer of the subdivision, has deeded to applicant Lots No. 29 and No. 161 as shown on Exhibit "A" for use as well sites.

8. That the applicant plans a net investment in plant of $51,545.00 and has made adequate arrangements for the financing of said plant construction. That on November 15, 1967, applicant had assets of $117,694.22 and liabilities of $76,717.60 and a net worth of $40,976.62. There has been no material change in applicant's financial condition since November 15, 1967.

9. That the applicant stands ready, willing and financially able to provide the services proposed in the application.

10. That the applicant further seeks approval of water rates as follows:

WATER RATE SCHEDULE

1. $4.50 per month per house minimum to cover up to 3,000 gal. per month

2. Over 3,000 gal per month $.65 per thousand

3. Tap-on Fee - $250.00 per lot

11. That there is presently no public water supply or municipal corporation that can reasonably supply the area sought to be certificated with water service and there is a public need for water service in said area.

Based on the foregoing Findings of Fact, the Commission arrives at the following

CONCLUSIONS

1. That the area known as Crown Point Subdivision, where approximately 172 homes are to be constructed, is now without any water service and there is a need for such service within said area.

2. That the applicant stands ready, willing, fit and financially able to provide water service to said subdivision.

3. That the Commission finds that public convenience and necessity require the issuance of a Certificate of Public Convenience and Necessity to the applicant.

4. That the Commission finds that during the period of development, the investment and expense cannot reasonably and accurately be ascertained, and, therefore, the schedule of rates herein proposed should be filed pursuant to G.S. 62-134.

In accordance with the above Conclusions and Findings of Fact it is, therefore, ORDERED that the applicant, W.E. Caviness, trading as Touch and Flow Water Systems be and he is hereby issued a Certificate of Public Convenience and Necessity for the construction, ownership and operation of a water system in the Crown Point Subdivision, Swansboro Township, Onslow County, North Carolina, which area is particularly described in applicant's Exhibit "A" and made a part hereof.

IT IS FURTHER ORDERED that the rates herein proposed be and they are hereby authorized to be filed on one day's notice pursuant to G.S. 62-134.

IT IS FURTHER ORDERED that the books and records of the applicant be kept in accordance with the uniform system of accounts as established by this Commission for water utilities, and that the applicant be and is hereby required to operate this system in accordance with the rules and regulations of the North Carolina Utilities Commission for water utilities.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-201, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of W.E. Caviness, T/A Touch and Flow Water Systems, 1118 Poplar Street, Jacksonville, North Carolina, for a certificate of public convenience and necessity authorizing him to own, construct, operate and maintain a well, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Colonial Heights, Wake County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on April 5, 1968, at 10:00 a.m.

BEFORE: Commissioners M. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

F.J. Carnage
Attorney at Law
115 1/2 East Hargett Street
Raleigh, North Carolina

George E. Brown
Attorney at Law
131 1/2 East Hargett Street
Raleigh, North Carolina

No Protestants.

BIGGS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on February 20, 1968, by W.E. Caviness, T/A Touch and Flow Water Systems, of Jacksonville, North Carolina, wherein the applicant seeks a certificate of public convenience and necessity to own, construct, operate and maintain a well, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Colonial Heights located in Wake County, North Carolina, which area is more specifically described in Applicant's Exhibit No. 6 herein, to which reference is made for complete description.

The application came on for hearing at the time and place above mentioned pursuant to notice of hearing issued by the Commission on March 4, 1968. At said hearing evidence was

adduced consisting of oral testimony and certain documentary evidence.

FINDINGS OF FACT

Based upon the evidence thus adduced, the Commission finds the following facts:

1. That W.E. Caviness is an individual trading as Touch and Flow Water Systems with mailing address at 118 Poplar Street, Jacksonville, North Carolina.

2. That the applicant proposes to install and operate a water well, pumps, supply lines and metering equipment, and to distribute and sell water through said facilities to the residents of Colonial Heights Subdivision as shown on map identified as Applicant's Exhibit No. 6 entitled "Proposed Water Supply System for Colonial Heights, Owners: J.K. Boling & J.M. Parlow, Wake County, St. Mary's Township", dated April 13, 1967, by Gerald C. Strickland, P.E.

3. That the applicant does not now serve any residences in said subdivision but anticipates that he will ultimately serve 32 residences when the subdivision is completely developed.

4. That the applicant has submitted detailed plans for its existing water system to the State Board of Health, which plans and specifications have been approved by said Board.

5. That the applicant has submitted samples of water taken from his existing well, which water has been found to conform to the standards of the U.S. Department of Health for drinking water.

6. That applicant has made arrangements for the maintenance and upkeep of said water system.

7. That said subdivision is located outside the corporate limits of any municipality and beyond the reach of any existing water system, and the water supply which applicant proposes to furnish to the residents of said subdivision is the only available water supply.

8. That the assets comprising said water system have been contributed to applicant without encumbrances, and the applicant has obtained from the owners of said subdivision a deed of easement under which he may extend his water lines along and under the streets in said subdivision.

9. That the applicant is in all respects fit, willing and able to provide water service in the area described above.

CONCLUSIONS

Based upon the foregoing Findings of Fact, the Commission concludes that there is a demand and need for water service in the area shown on the map above referred to, which need and demand cannot be filled or met by any other supplier, and that the public convenience and necessity will be served by the granting of a certificate of public convenience and necessity to the applicant.

IT IS, THEREFORE, ORDERED that W.E. Caviness, T/A Touch and Flow Water Systems, of Jacksonville, North Carolina, be and he is hereby granted a certificate of public convenience and necessity to construct, own and operate a water system and to distribute therefrom water in those areas of Colonial Heights Subdivision shown on the map filed with the Commission marked Applicant's Exhibit No. 6, which reference is made for more complete description.

IT IS FURTHER ORDERED that the applicant, prior to connecting any additional wells to the water system presently installed in said subdivision, shall first obtain from the North Carolina State Board of Health an approval of the plan and design of said well and shall submit samples of the water from said well for bacteriological and chemical analyses, the results of which analyses must indicate that said water conforms to the minimum standards prescribed by the United States Department of Health for drinking water before same is permitted to flow into the system, with documentary evidence of said approval and water analyses to be filed with the Commission.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission, and that he shall otherwise comply in all respects with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a schedule of rates to be charged to customers purchasing water from him, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this order shall in and of itself constitute a certificate of public convenience and necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-243

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Centennial Water Company, Inc., for a Certificate of Public Convenience and Necessity Authorizing it to Provide Water and Sewer Service in the Hickory Woods and Tilden Woods Subdivisions, Mecklenburg County, North Carolina, and for Approval of Rates	))))))	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on February 23, 1968, at 10:00 a.m.

BEFORE: Commissioners Clawson L. Williams, Jr. (Presiding), Thomas R. Eller and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

WILLIAMS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on November 9, 1967, by Centennial Water Company, Inc. (applicant), a South Carolina corporation, domesticated in North Carolina on June 28, 1967. The applicant seeks a Certificate of Public Convenience and Necessity for the sale and distribution of water and for the provision of sewer service in the Hickory Woods and Tilden Woods Subdivisions located in Mecklenburg County, North Carolina, as shown on maps marked Exhibits 6, 7, and 8. The applicant further filed a schedule of proposed rates identified as Exhibit C attached to the application.

Notice of hearing, setting forth the time and place for the consideration of this application and setting forth the proposed water rate schedule was duly published in The Charlotte Observer and this cause came on to be heard at the time and place specified in the notice. At said hearing

evidence was adduced consisting of the testimony of witnesses and of certain documentary exhibits.

Based on the evidence adduced at the hearing and the verified statements contained in the application and the attachments thereto, which are uncontroverted, the Commission makes the following

FINDINGS OF FACT

1. That the applicant is a duly organized and existing coporation under the laws of the State of South Carolina and domesticated under the laws of the State of North Carolina with its principal office at 200 S. Coit Street, P.O. Drawer 1598, Florence, South Carolina, and with the North Carolina office of the registered agent being 308 First Citizens Bank Building, Fayetteville, North Carolina.

2. That the officers of Centennial Water Company, Inc., are as follows: Scott A. Nivens, President; William W. Enzor, Vice President; James W. Long, Secretary.

3. That the applicant proposes to install and operate water wells, pumps, supply lines and metering equipment, collecting lines, and sewer treatment facilities in order to distribute and sell water and to provide sewer service in the Hickory Woods and Tilden Woods Subdivisions as shown on map attached to the application herein identified as Exhibit 6, 7, and 8 to which reference is hereby made for a more complete description of the area to be served and of the location of the water and sewer facilities through which service is to be afforded.

4. The applicant proposes to initially serve 150 customers in said subdivisions with water and sewer service.

5. That the applicant has received approval of its plans for its proposed water system from the North Carolina State Board of Health and has received approval of its plans for its sewage collection and treatment facilities from the Department of Water and Air Resources, Stream Sanitation Division.

6. That Pyramid Development Corporation, the developer in the area, has entered into a contract with Centennial Water Company, Inc., under which Centennial agrees to provide water and sewer service to approximately 500 residential lots in the Hickory Woods and Tilden Woods Subdivisions. The details of the contract are contained in Exhibit 1.

7. That the applicant at the time of filing has drilled no wells nor installed any pumps or storage tanks.

8. That the two subdivisions, Hickory Woods and Tilden Woods, are located outside the corporate limits of the City of Charlotte and beyond the reach of any existing public water and sewer system and that the water supply and the

sewer system proposed herein is the only practical means of providing water and sewer service within said subdivisions.

9. That the financing for the construction of the facilities herein will be provided by First Provident Corporation of South Carolina of which Centennial Water Company, Inc. is a wholly-owned subsidiary. First Provident Corporated agrees to furnish such construction money and permanent financing as may be needed by Centennial Water Company, Inc., for the installation of the utilities in Hickory Woods and Tilden Woods Subdivisions, Mecklenburg County, North Carolina.

Based on the above Findings of Fact, the Commission makes the following

CONCLUSIONS

That there is a demand and a need for water and sewer service in the Hickory Woods and Tilden Woods Subdivisions, Mecklenburg County, North Carolina, as shown on the map hereinabove mentioned which need and demand cannot be reasonably made by any other supplier or by any other means and that public convenience and necessity will be served by granting the Certificate of Public Convenience and Necessity to Centennial Water Company, Inc., as set forth in its application.

IT IS, THEREFORE, ORDERED that Centennial Water Company, Inc., be and is hereby granted a Certificate of Public Convenience and Necessity to construct, own and operate a water and sewer system and to provide these services therefrom in the Hickory Woods and Tilden Woods Subdivisions as shown on the maps attached to the application marked Exhibits 6, 7, and 8.

IT IS FURTHER ORDERED that the applicant shall submit complete details on the quantity and quality of the water to be supplied and the pumping capacity and storage capacity required for the provisions of the service herein.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission in W-100, Sub 1, which books and records shall also be maintained in a subaccount manner so that the operating revenue, the plant investment, the relating depreciation reserve and contributions are readily obtainable.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a consolidated annual report in accordance with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the schedule of rates, as shown in the tariff attached to the application and marked Exhibit C, is hereby deemed to be filed as tariff schedules under

G.S. 62-138, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this Order shall, in and of itself, constitute a Certificate of Public Convenience and Necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-243, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Centennial Water Company, Inc., Florence, South Carolina, for a certificate of convenience and necessity to provide water service in the Lakewood Estates Subdivision, Wayne County, North Carolina, and for approval of rates	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: The Commission Hearing Room Raleigh, North Carolina, on June 6, 1968

BEFORE: Commissioners John W. McDevitt, Presiding, and Clawson L. Williams, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

Paul B. Edmundson, Jr.
Edmundson & Edmundson
Attorneys at Law
602 Borden Building
Goldsboro, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

No Protestants.

McDEVITT, COMMISSIONER: By application filed on March 12, 1968, Centennial Water Company, Inc., seeks a certificate of public convenience and necessity to own and operate a water distribution system and sell water to one hundred and forty-

eight customers in the residential subdivision of Lakewood Estates, located in Wayne County, on State Road No. 1926, four miles from Goldsboro, North Carolina.

Public hearing was scheduled and held as captioned after due notice published in the Goldsboro News-Argus, a newspaper having general circulation in the area to be served. The applicant was present at the hearing and offered uncontroverted testimony and exhibits on which the Commission makes the following

FINDINGS OF FACT

1. Centennial Water Company, Inc., is a duly organized and existing corporation under the laws of the State of South Carolina and domesticated under the laws of the State of North Carolina, with its principal office in Florence, South Carolina, and the office of its registered North Carolina agent at 308 First Citizens Bank Building, Fayetteville, North Carolina.

2. The officers of Centennial Water Company, Inc., are Scott A. Nivens, President; Edwin S. Smith, Vice President; James W. Long, Secretary; and Warren L. Jackson, Treasurer.

3. Centennial entered into an agreement on April 28, 1968, with Land Promotions, Inc., owner of the lots in Lakewood Estates Subdivision, whereby Land Promotions, Inc., assumed responsibility for the installation of and payment for the proposed water system which Land Promotions, Inc., will deed in its entirety to Centennial which will thereafter assume responsibility for water service.

4. By warranty deeds executed on April 29, 1968, Exodus Development Corporation, Goldsboro, North Carolina, conveyed to Centennial the lot (1.4 acres) on which the proposed wells are to be situated and Land Promotions, Inc., conveyed to Centennial all service lines, fixtures, meters and related improvements which are a part of the water distrubution system installed by Land Promotions, Inc., within the boundaries of the Lakewood Estates Subdivision.

5. The estimated cost of the completed water system is $70,608.

6. Plans and specifications for the proposed water system were approved by the State Board of Health in a letter dated May 31, 1966, with the recommendation that a second well be secured. The well site on Lot No. 21 of Section 1 of the subdivision, as shown on Exhibit A, was approved by the State Board of Health in a letter dated June 16, 1966.

7. Centennial at the time of the filing had drilled one well on Lot No. 21 and had installed water lines and related equipment to serve eighty customers.

8. Centennial by previous authorization from this Commission in Docket No. W-243 operates water and sewer systems in Hickory Woods and Tilden Woods Subdivisions in Mecklenburg County, North Carolina, and has in the course of its operations complied with the Rules and Regulations of the Commission.

9. The following rates and charges for water service are proposed by the applicant:

WATER RATE SCHEDULE

Residential Service

RATE:

Consumption			Per 100 Cubic Feet
First	3,300	Cubic Feet	$ .60*
Next	6,700	Cubic Feet	.48
Next	10,000	Cubic Feet	.40
Next	30,000	Cubic Feet	.30
Next	50,000	Cubic Feet	.24
All Over	100,000	Cubic Feet	.19

*With a minimum charge of $3.50 for water service.

CONNECTION CHARGES: $350.00 per service installed.

RECONNECTION CHARGES:

N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered.

10. Centennial's balance sheet for the fiscal year ending April 30, 1968, reflects total assets of $108,627.44, total liabilities of $77,561.53 and stockholders' equity of $31,065.91.

Based on the above Findings of Fact, the Commission makes the following

CONCLUSION

Centennial Water Company, Inc., has borne the burden of proof that there is a demand and need for the proposed water service in Lakewood Estates Subdivision, which need and demand cannot reasonably be net by any other means and that public convenience and necessity will be served by granting the certificate of public convenience and necessity to Centennial Water Company, Inc., as set forth in its application. Applicant is fit, ready, willing and able to provide the proposed services on a continuing basis and the rates and charges proposed by the applicant are just and reasonable both to the applicant and to the public it proposes to serve.

IT IS, THEREFORE, ORDERED that Centennial Water Company, Inc., be and it is hereby granted a certificate of public convenience and necessity to construct, own and operate a water system to provide water service to the customers in the Lakewood Estates Subdivision, as shown on Exhibit A attached to the application.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by the Commission in Docket No. W-100, Sub 1, which books and records shall be maintained in a subaccount manner so that the operating revenues, the plant investment, the relating depreciation reserve and contributions are readily obtainable.

IT IS FURTHER ORDERED that the schedule of rates and charges set forth in Appendix A attached hereto and made a part hereof be and the same are hereby approved as the lawful rates and charges for applicant's customers in the Lakewood Estates Subdivision and that this tariff schedule is deemed to be filed in accordance with G.S. 62-138 and authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a consolidated annual report of its operations and otherwise comply with all the Rules and Regulations of the North Carolina Utilities Commission.

IT IS FURTHER ORDERED that this order shall in and of itself constitute a certificate of public convenience and necessity for the operation of the proposed water system.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of August, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A
Centennial Water Company, Inc.
Lakewood Estates Subdivision

WATER RATE SCHEDULE

Residential Service

RATE:

Consumption			Per 100 Cubic Foot
First	3,300	Cubic Feet	$ .60*
Next	6,700	Cubic Feet	.48
Next	10,000	Cubic Feet	.40
Next	30,000	Cubic Feet	.30
Next	50,000	Cubic Feet	.24
All Over	100,000	Cubic Feet	.19

*With a minimum charge of $3.50 for water service.

CONNECTION CHARGES: $350.00 per service installed.

RECONNECTION CHARGES:

N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered.

DOCKET NO. W-233

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Frank A. Corriher, Route 3, China Grove, North Carolina, for a Certificate of Public Convenience and Necessity to provide water service in various subdivisions in Iredell, Cabarrus, Rowan and Mecklenburg Counties, North Carolina, and for approval of rates	)	RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on December 8, 1967, and March 28, 1968

BEFORE: Chairman Harry T. Westcott

APPEARANCES:

For the Applicant:

Frank A. Corriher, in Person

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

WESTCOTT, CHAIRMAN: On June 6, 1967, Frank A. Corriher filed with the Commission application for a Certificate of Public Convenience and Necessity seeking authority to provide water service to the following subdivisions:

COUNTY	SUBDIVISION SERVED
Mecklenburg	Island Forest
Cabarrus	Bethpage Community Memorial Circle
	Elwood Street
	New Haven
	Private Acres
	Southwood Park

Iredell	Commodore Peninsula 1 and 2
Rowan	Oakland (Sandy Ridge) Tanglewood 1 and 2 Westfield

and for approval of rates.

By order issued October 23, 1967, the Commission ordered hearing and prescribed notice to the public. Hearing was held on December 8, 1967, at which time the Commission took testimony and received exhibits. However, the prescribed notice was not published as required and the Commission continued the hearing and required that direct notice be furnished each of the customers of the applicant, which notice advised the customers of the application filed and the rates proposed for water service by Frank A. Corriher. As a result of this notice, several customers complained concerning the proposed rates and service.

By order issued March 19, 1968, the Commission scheduled further hearing, with notice to each complainant of the time and place thereof. None of the complainants appeared. Evidence consisting of oral testimony and certain documentary evidence was offered by applicant.

FINDINGS OF FACT

Based upon the evidence thus adduced, the Commission finds the following facts:

1. That the applicant, Frank A. Corriher, is an individual operating water systems in subdivisions in Iredell, Cabarrus, Rowan and Mecklenburg Counties. The location of the subdivisions in each of the counties is shown on Exhibits AA-1 through AA-4.

2. That the applicant has installed water lines, pumps, supply lines, metering equipment and proposes to continue to distribute and sell water through said facilities to the residents of

COUNTY	SUBDIVISION SERVED
Mecklenburg	Island Forest
Cabarrus	Bethpage Community Memorial Circle Elwood Street New Haven Private Acres Southwood Park
Irdell	Commodore Peninsula 1 and 2
Rowan	Oakland (Sandy Ridge) Tanglewood 1 and 2 Westfield

which areas are more clearly defined by Applicant's Exhibits A-1 through A-9.

3. That the applicant provides water to approximately 167 customers and he anticipates that these systems will ultimately supply approximately 460 residents when the subdivisions are completely developed.

4. That the applicant has received approvals from the North Carolina State Board of Health for each of the water systems as listed herein.

5. That the water supply in each of the subdivisions complies with the U.S. Public Health Drinking Water Standards - 1962.

6. That the facilities as shown on Exhibits A-1 through A-9 and B-1 through B-10 can supply the customers with reasonable service.

7. That the subdivisions herein enumerated are located outside the corporate limits of any municipality and beyond the reach of any existing water system and that the water supply which the applicant proposes to furnish to the residents in said subdivisions is the only available water source.

8. That the applicant is in all respects fit, willing and able to provide water service in the areas described herein.

9. That the applicant proposes to charge the following rates and charges.

WATER RATE SCHEDULE
Residential Service

RATE

Unmetered Rate - $4.00 per month
Metered Rates - First 4,000 gallons $4.00 (minimum)
All over 4,000 gallons $.75 per 1,000 gallons
Seasonal Rate - $36 per year (Commodore Peninsula)
$.50 per month additional if bill is not paid within 15 days after due date.

CONNECTION CHARGES

Bethpage Community Memorial Circle - $100	Island Forest - $75
New Haven - $75	Oakland - $75
Southwood Park - None	Private Acres - None
Tanglewood - None	Commodore Peninsula - None
Fairfield - None	Westfield - None

10. That the Commission staff investigated the five complaints received, two of which involved general inquiries and concern over the rates proposed and the remaining

complaints resulted from the inability of a flat-rate system in the Southwood Subdivision to meet the peak demands of the consumers in the summer season when large amounts of water are used for sprinkling lawns. Meters have been provided to half of these consumers in this subdivision and meters will be installed if necessary to eliminate any future excess consumption.

CONCLUSIONS

The Commission concludes that there is a demand and need for water service in the areas shown, which need and demand cannot be filled by any other existing suppliers, and that public convenience and necessity will be served by the granting of the Certificate of Public Convenience and Necessity to the applicant.

IT IS, THEREFORE, ORDERED That Frank A. Corriher, Route 3, China Grove, North Carolina, be and is hereby granted a Certificate of Public Convenience and Necessity to construct, own and operate water systems and to distribute water therefrom in the following subdivisions:

COUNTY	SUBDIVISION SERVED
Mecklenburg	Island Forest
Cabarrus	Bethpage Community Memorial Circle
	Elwood Street
	New Haven
	Private Acres
	Southwood Park
Iredell	Commodore Peninsula 1 and 2
Rowan	Oakland (Sandy Ridge)
	Tanglewood 1 and 2
	Westfield

which areas are shown on maps filed with the Commission and marked Applicant's Exhibits A-1 through A-9.

IT IS FURTHER ORDERED That the applicant shall file with the Commission the schedule of rates to be charged to customers purchasing water from it as set forth in its application, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED That this order shall in and of itself constitute a Certificate of Public Convenience and Necessity for the operation of said water systems hereinabove set forth.

IT IS FURTHER ORDERED That the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission, and that it

shall otherwise comply in all respects with the rules and regulations of the Commission applicable to water utilities.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-252

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Crystal Springs Water Company, Inc., Fayetteville, North Carolina, for Certificate of Public Convenience and Necessity Authorizing it to Construct, Operate and Maintain Wells, Water Pumps, and Water Lines, and to Distribute and Sell Water to Customers in the Iris Gardens Subdivision, Fayetteville, North Carolina, and the Approval of Rates	ORDER GRANTING APPLICATION

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on October 31, 1968, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Presiding, Thomas R. Eller, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

Hebert H. Thorp
Rose & Thorp
Attorneys at Law
First Citizens Bank Building
Fayetteville, North Carolina 28302

For the Commission Staff:

Larry G. Ford
Associate Commission Attorney
P. O. Box 991, Raleigh, North Carolina

No Protestants.

McDEVITT, COMMISSIONER: Application was filed on April 4, 1968, by Crystal Springs Water Company, Inc., of Fayetteville, North Carolina, for a Certificate of Public Convenience and Necessity for the sale and distribution of water in the Iris Gardens Subdivision located in Cumberland

County three miles southwest of Fayetteville, North Carolina.

Public Hearing was scheduled and held as captioned. Notice of the Hearing was duly published in the Fayetteville Observer, Fayetteville, North Carolina. Evidence was heard consisting of the testimony of three witnesses for the applicant and certain documentary exhibits.

Based upon the evidence adduced and the verified statements in the application and attachments which are uncontroverted, the Commission makes the following

FINDINGS OF FACT

1. Applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office in Fayetteville, North Carolina, and with Officers as follows:

President: James L. Yates
Vice President: David G. Martin
Secretary-Treasurer: W.E. Tyson
Assistant Secretary-Treasurer: Irene V. Ireland

2. Applicant owns, operates and maintain wells, water pumps, water supply lines and presently distributes water to 22 customers in the Iris Gardens Subdivision as described by Exhibits A-1 and A-2.

3. Applicant proposes to provide metered water service to 155 customers in the Iris Gardens Subdivision.

4. Applicant proposes to serve 500 customers in the Iris Gardens Extended which is a separate section of the subdivision in which construction of homes has not yet begun.

5. Applicant further proposes to serve approximately 200 customers along its water line between Iris Gardens and Iris Gardens Extended, a distance of approximately 10,000 feet.

6. Applicant proposes to charge the following rates for its services:

0 - 3,000 gallons.....$3.00 Minimum
All over 3,000 gallons.....$ .75 per thousand gallons
Tapping fee.....$150.00 per Lot

7. Applicant is financially and otherwise able and willing to provide the proposed service.

8. Plans for its proposed water system were approved by the North Carolina State Board of Health, under serial number 5837-R, dated March 7, 1968.

9. Applicant submitted results of analysis of water taken from Wells #1 and #2 of the proposed water system, which water conforms with the minimum standards of the United States Public Health Drinking Water Standards - 1968.

10. Applicant will maintain a full-time office in the Subdivision where the customers may make complaints and pay their bills.

11. The present water supply for Iris Gardens consists of Well #1 and Well #2 which yield 33 gallons per minute and 50 gallons per minute, respectively.

12. Applicant has no plan for fire hydrants in the Subdivision.

13. The system as proposed can reasonably meet the anticipated demands for water service.

CONCLUSIONS

The Commission concludes that there is a demand and need for water service in the Iris Gardens Subdivision which need and demand cannot be adequately met by any other supplier, and public convenience and necessity will be served by granting a Certificate of Public Convenience and Necessity to the Applicant.

IT IS, THEREFORE, ORDERED that Crystal Springs Water Company, Inc., Fayetteville, North Carolina, be, and it is hereby, granted a Certificate of Public Convenience and Necessity to construct, own and operate a water system and to distribute water for compensation in the Iris Gardens Subdivision in Fayetteville, North Carolina, as shown on Exhibits A-1 and A-2 to which reference is made for a more complete description.

IT IS FURTHER ORDERED that the Applicant shall maintain general books and records in accordance with the System and Accounts adopted by this Commission and otherwise comply with the rules and regulations of the North Carolina Utilities Commission.

IT IS FURTHER ORDERED that the Applicant shall file a consolidated annual report in accordance with the rules and regulations of the North Carolina Utilities Commission.

IT IS FURTHER ORDERED that the proposed schedule of rates as attached to the application and marked Exhibit C is hereby deemed to be filed as the tariff schedule under G.S. 62-134 and 138, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that Applicant provides fire hydrants within the Iris Gardens Subdivision, including Iris Gardens Extended, at the same time it installs the 500,000

gallon overhead storage tank in Iris Gardens Extended, and that Applicant file with the Commission plans showing its fire hydrants and overhead storage facilities.

ISSUED BY ORDER OF THE COMMISSION.

This 18th day of November, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-246

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Figure "8" Island Utility Company for a Certificate of Public Convenience and Necessity authorizing it to construct, operate, and maintain wells, water pumps, water supply lines and to distribute and sell water to customers in Figure "8" Island Subdivision, New Hanover County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on March 22, 1968, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Clawson L. Williams, Jr., and Thomas R. Eller, Jr. (presiding)

APPEARANCES:

For the Applicant:

Ellis L. Aycock
Stevens, Burgwin, McGhee & Ryals
Attorneys at Law
P.O. Box 24, Wilmington, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P.O. Box 991, Raleigh, North Carolina

No Protestants.

ELLER, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on January 8, 1968, by Figure "8" Island Utility Company (Applicant) wherein the Applicant seeks a certificate of public convenience and necessity for the sale and distribution of water in the Figure "8" Island

Subdivision located in New Hanover County, North Carolina, as shown on map attached to the application and identified as Applicant's Exhibit A. Among the other exhibits attached to said application was a tariff of proposed rates identified as Exhibit C.

Notice of hearing, setting forth the time and place for the consideration of this application and stating the proposed water rate schedule specified in Exhibit C was duly published in the Star-News Newspapers, Inc., Wilmington, North Carolina, and this cause came on to be heard at the time and place specified in the notice. At said hearing evidence was adduced consisting of the testimony of witnesses and of certain documentary exhibits.

Based on the evidence adduced at the hearing and the verified statements contained in the application and the attachments thereto, which are uncontroverted, the Commission makes the following

FINDINGS OF FACT

1. Applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office at 216 Beech Street, Wrightsville Beach, North Carolina, and with officers as follows: President Richard Wetherill; Vice President, D.D. Cameron; Secretary, B.B. Cameron; and Treasurer, R.G. Trask.

2. Applicant proposes to install and operate water lines, pumps, supply lines, metering equipment and to distribute and sell water through said facilities to the residents of the Figure "8" Island Subdivision as shown on map attached to the application herein identified as Exhibit A and entitled "Figure '8' Island Water Supply and Distribution System" dated December 2, 1966, to which reference is hereby made for a more perfect description of the area to be served and of the location of the water supply facilities through and with which service is to be afforded.

3. Applicant proposes to serve some four hundred (400) customers in said subdivision with metered service.

4. The North Carolina State Board of Health has approved the plans and specifications for said water system under Serial No. 6029 dated January 23, 1967.

5. Applicant has submitted samples of water taken from the well proposed to be used in connection with said water system, which sample shows that the water is safe for drinking purposes and chemically suitable for use and consumption.

6. Applicant has made arrangements with Mr. G.W. Dobo, a water utility operator, to operate and manage said water system.

7. Figure "8" Island Utility Company is located outside the corporate limits of the City of Wilmington, and beyond the reach of any existing public water system and the water supply which the Applicant proposes to furnish to the residents of said subdivision is the only available central water supply.

8. Applicant has submitted a copy of the deed for the land on which the well is located and a copy of the right of way and easement granted to it by the developers of said subdivision, Island Development Company, as shown on Exhibits I and J.

9. Island Creek Development Company filed a statement stating that it will supply such additional funds to Figure "8" Island Utility Company in order to construct and operate and maintain the water system in the Figure "8" Island Subdivision.

10. The water system as shown on the map hereinabove referred to has to a substantial extent been installed and constitutes a contributed asset of the Applicant and is not subject to lien or encumbrance.

11. Applicant in all respects is fit, able, and willing to provide water service to customers in the area described in the application.

CONCLUSIONS

There is a demand and need for water service in the Figure "8" Island Subdivision as shown on the map hereinabove mentioned, which need and demand cannot be filled or met by any other supplier. The public convenience and necessity will be served by the granting of a certificate of public convenience and necessity to Figure "8" Island Utility Company as set forth in its application.

IT IS, THEREFORE, ORDERED:

1. That Figure "8" Island Utility Company be, and is hereby, granted a certificate of public convenience and necessity to construct, own, and operate a water system and to sell and distribute therefrom water in the Figure "9" Island Subdivision as shown on a map attached to the application marked Exhibit A.

2. Applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission in W-100, Sub 1, which books and records shall also be maintained in a subaccount manner so that the operating revenues, the plant investment, the relating depreciation reserve, and contributions are readily obtainable.

3. Applicant shall file with the Commission a consolidated annual report in accordance with the rules and regulations of the Commission.

4. That the schedule of rates, as shown in the tariff attached to the application and marked Exhibit C is hereby deemed to be filed as tariff schedules under G.S. 62-138, which schedule of rates is hereby authorized to become effective on one day's notice.

5. That this order shall, in and of itself, constitute a certificate of public convenience and necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-245

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Hambright McCoy, Inc., 1740 East Independence Boulevard, Charlotte, North Carolina, for a certificate of public convenience and necessity authorizing it to own, construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Wildwood Green, Mecklenburg County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on March 1, 1968

BEFORE: Commissioners M. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Kenneth R. Downs
Attorney at Law
715 Law Building
Charlotte, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on December 12, 1967, by Hambright McCoy, Inc., of Charlotte, North Carolina, wherein the applicant seeks a certificate of public convenience and necessity to own, construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Wildwood Green located near Charlotte, North Carolina, which area is more specifically described in Applicant's Exhibit No. 5 herein, to which reference is made for complete description.

The application came on for hearing at the time and place above mentioned pursuant to notice of hearing issued by the Commission on December 22, 1967. At said hearing evidence was adduced consisting of oral testimony and certain documentary evidence.

FINDINGS OF FACT

Based upon the evidence thus adduced, the Commission finds the following facts:

1. That the applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office in Charlotte, North Carolina.

2. That the applicant proposes to install and operate water wells, pumps, supply lines and metering equipment, and to distribute and sell water through said facilities to the residents of Wildwood Green Subdivision as shown on map identified as Applicant's Exhibit No. 5 entitled "Property of Investment Land Sales, Subdivision Plan & Topographic Survey of Hambright Tract, Long Creek Township, Mecklenburg County, N.C.," dated December 27, 1965, by Keith R. Moen, Registered Surveyor.

3. That the applicant now serves approximately 60 mobile home residences in said subdivision and anticipates that it will ultimately serve 321 residences when the subdivision is completely developed.

4. That the applicant has submitted detailed plans for its existing water system to the State Board of Health, which plans and specifications have been approved by said Board.

5. That the applicant has submitted samples of water taken from its existing wells, which water has been found to conform to the standards of the U.S. Department of Health for drinking water.

6. That applicant has made arrangements for the maintenance and upkeep of said water system.

7. That said subdivision is located outside the corporate limits of any municipality and beyond the reach of any existing water system, and the water supply which applicant proposes to furnish tc the residents of said subdivision is the only available water supply.

8. That the wells, pumps, tanks, pipes and metering equipment that comprise said water system have been contributed to the applicant-corporation as unencumbered capital assets, although the lands upon which said system is laid out are subject to certain encumbrances.

9. That the applicant is in all respects fit, willing and able to provide water service in the area described above.

CONCLUSIONS

Based upon the foregoing Findings of Fact, the Commission concludes that there is a demand and need for water service in the area shown on the map above referred to, which need and demand cannot be filled or met by any other supplier, and that the public convenience and necessity will be served by the granting of a certificate of public convenience and necessity to the applicant.

IT IS, THEREFORE, ORDERED that Hambright McCoy, Inc., of Charlotte, North Carolina, be and it is hereby granted a certificate of public convenience and necessity to construct, own and operate a water system and to distribute therefrom water in those areas of Wildwood Green Subdivision shown on the map filed with the Commission marked Applicant's Exhibit No. 5 which reference is made for more complete description.

IT IS FURTHER ORDERED that the applicant, prior to connecting any additional wells to the water system presently installed in said subdivision, shall first obtain from the North Carolina State Board of Health an approval of the plan and design of said well and shall submit samples of the water from said well for bacteriological and chemical analyses, the results of which analyses must indicate that said water conforms to the minimum standards prescribed by the U.S. Department of Health for drinking water before same is permitted to flow into the system, with documentary evidence of said approval and water analyses to be filed with the Commission.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission, and that it shall otherwise comply in all respects with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a schedule of rates to be charged to customers purchasing water from it, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this order shall in and of itself constitute a certificate of public convenience and necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of May, 1968.

NORTH CARCLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-196, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Kindellwood Water Company, Inc., Fayetteville, North Carolina, for an amendment to its certificate of public convenience and necessity authorizing it to construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area located in the village of Cumberland, Cumberland County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on October 11, 1967, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott, and Commissioners M. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

J. William Anderson
Rose and Thorp
Attorneys at Law
P.O. Box 1239, Fayetteville, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Application was filed in this cause by Kindellwood Water Company, Inc., Fayetteville, Cumberland County, North Carolina, on September 5, 1967, for an amendment to its existing certificate of public convenience and necessity in order to provide water service in an area located in the village of Cumberland near Fayetteville, North Carolina.

Notice of hearing in this matter was issued by the Commission on September 26, 1967, setting the hearing on October 11 at 2 o'clock p.m. in the Commission offices in the Old YMCA Building, Raleigh, North Carolina. Said notice was served on all existing water companies in Cumberland County and was duly published in The Fayetteville Observer.

Hearing in the matter was held at the time and place specified in said notice, at which evidence was adduced consisting of the testimony of E.G. Boggs, President of the applicant-corporation, and of certain documentary evidence. Since the close of the hearing, certain additional documentary evidence has been filed with the Commission in support of the application.

FINDINGS OF FACT

1. The applicant, Kindellwood Water Company, Inc., is a duly organized and existing North Carolina corporation which currently holds a certificate of public convenience and necessity issued by this Commission, under which it is authorized to provide water services in certain residential subdivisions near the City of Fayetteville, in Cumberland County, North Carolina.

2. That within the area sought to be served by applicant is located a residential area (hereinafter called Cumberland Village) in which there is an existing water system owned by Dixie Yarns, Inc. Said water system was installed several years ago by said corporation to serve houses in said area which were largely occupied by employees at its textile mill. In recent times, the corporation has sold the houses located in said village and now desires to cease the operation of said water system. It has contracted with the applicant to sell to him said water system, subject to applicant's obtaining approval for the operation of same from this Commission.

3. The water system which applicant proposes to purchase and operate in Cumberland Village has been inspected and approved by the North Carolina State Board of Health, and the water supply for said system has been found to be sanitary and to conform to the minimum standards of the U.S. Department of Health for drinking water.

4. Cumberland Village, in which said water system is installed, is located beyond the reach of any existing municipal or other public water systems, and the only water

available to its occupants is through the existing system or by individual wells.

5. Much of the area sought to be served by the applicant, as described in its amended application, is undeveloped, and it appears from the evidence that there is no present need or demand for public water services in said undeveloped area.

6. The applicant-corporation is owned and managed by E.G. Boggs, who also owns and manages Standard Well and Pump Company. Said E.G. Boggs attached his individual financial statement to the application showing a net worth of $252,813, which resources he proposes to make available to applicant-corporation in order to provide the service hereinabove mentioned.

CONCLUSIONS

1. That there is a need for water service in the residential area shown on map marked Exhibit H and entitled "Community Water System, Cumberland, N.C., Kindellwood Water Co., Inc., dated August 1967, John S. Collie, Registered Engineer," herein called Cumberland Village, and the needs and convenience of the occupants of said area will be served by amending the certificate of public convenience and necessity heretofore issued to the applicant so as to authorize it to provide water service in said area.

2. The applicant is fit, willing and able to provide water service in the area shown on said map.

3. At the present time there is no need for public water service in the undeveloped portion of the area mentioned in the applicant's application; however, under G.S. 62-110 applicant will not need additional authorization from the Commission in order to provide such service as may be hereafter needed in the areas contiguous to the area shown on said map.

IT IS, THEREFORE, ORDERED that the certificate of public convenience and necessity heretofore issued to Kindellwood Water Company, Inc., be and the same is hereby amended so as to authorize said corporation to construct, operate and maintain a public water system in the area shown on said Exhibit H filed in this cause and entitled as aforesaid; and except as herein amended, the certificate of Kindellwood Water Company, Inc., shall otherwise be unaffected.

IT IS FURTHER ORDERED that said Kindellwood Water Company, Inc., shall, with respect to its operation of a water system in said area, comply with all the rules of the Commission and all provisions of law relating to the operation of water systems.

IT IS FURTHER ORDERED that the applicant may file with the Commission on one day's notice a schedule of rates to be applied to the water service provided in said area.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-250

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of King's Grant Water Company, Wilmington, North Carolina, for a certificate of public convenience and necessity authorizing it to own, construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as King's Grant, New Hanover County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on March 29, 1968, at 10:00 a.m.

BEFORE: Commissioners M. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Addison Hewlett, Jr.
Attorney at Law
3 Odd Fellows Building
Wilmington, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on February 23, 1968, by King's Grant Water Company, of Wilmington, North Carolina, wherein the applicant seeks a certificate of public convenience and necessity to own, construct, operate and

maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as King's Grant located near Wilmington, North Carolina, which area is more specifically described in Applicant's Exhibit No. 5 herein, to which reference is made for complete description.

The application came on for hearing at the time and place above mentioned pursuant to notice of hearing issued by the Commission on March 4, 1968. At said hearing evidence was adduced consisting of oral testimony and certain documentary evidence.

FINDINGS OF FACT

Based upon the evidence thus adduced, the Commission finds the following facts:

1. That the applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office in Wilmington, North Carolina.

2. That the applicant proposes to install and operate water wells, pumps, supply lines and metering equipment, and to distribute and sell water through said facilities to the residents of King's Grant Subdivision as shown on map identified as Applicant's Exhibit No. 5 entitled "Kings Grant, Wilmington, N.C., Property of Smith Creek Development, Inc., Phase I and Phase III," dated October 13, 1967, by Contractors & Engineers Services, Inc., Goldsboro, North Carolina.

3. That the applicant does not now serve any residences in said subdivision but anticipates that it will ultimately serve several hundred residences when the subdivision is completely developed.

4. That the applicant has submitted detailed plans for its existing water system to the State Board of Health, which plans and specifications have been approved by said Board.

5. That the applicant has submitted samples of water taken from its existing well, which water has been found to conform to the standards of the U.S. Department of Health for drinking water.

6. That applicant has made arrangements for the maintenance and upkeep of said water system.

7. That said subdivision is located outside the corporate limits of any municipality and beyond the reach of any existing water system, and the water supply which applicant proposes to furnish to the residents of said subdivision is the only available water supply.

8. That the pumps, tanks, pipes and metering equipment that comprise said water system have been contributed to the applicant-corporation as unencumbered capital assets, although the lands upon which said system is laid out are subject to certain encumbrances.

9. That the applicant is in all respects fit, willing and able to provide water service in the area described above.

CONCLUSIONS

Based upon the foregoing Findings of Fact, the Commission concludes that there is a demand and need for water service in the area shown on the map above referred to, which need and demand cannot be filled or met by any other supplier, and that the public convenience and necessity will be served by the granting of a certificate of public convenience and necessity to the applicant.

IT IS, THEREFORE, ORDERED that King's Grant Water Company, of Wilmington, North Carolina, be and it is hereby granted a certificate of public convenience and necessity to construct, own and operate a water system and to distribute therefrom water in those areas of King's Grant Subdivision shown on the map filed with the Commission marked Applicant's Exhibit No. 5, which reference is made for more complete description.

IT IS FURTHER ORDERED that the application prior to connecting any additional wells, to the water system presently installed in said subdivision, shall first obtain from the North Carolina State Board of Health an approval of the plan and design of said well and shall submit samples of the water from said well for bacteriological and chemical analyses, the results of which analyses must indicate that said water conforms to the minimum standards prescribed by the U.S. Department of Health for drinking water before same is permitted to flow into the system, with documentary evidence of said approval and water analyses to be filed with the Commission.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission, and that it shall otherwise comply in all respects with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a schedule of rates to be charged to customers purchasing water from it, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this order shall in and of itself constitute a certificate of public convenience and necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of April, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-240

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Lampe & Vann for Certificate of Public Convenience and Necessity and Approval of Rates for Service in Carriage Hills Subdivision, Wake County, North Carolina	) ORDER GRANTING) CERTIFICATE OF) PUBLIC) CONVENIENCE AND) NECESSITY

HEARD IN: Commission Hearing Room, Old YMCA Building, Raleigh, North Carolina, January 18, 1968

BEFORE: Commissioners Clawson L. Williams, Jr. (Presiding), Thomas R. Eller, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Commission Staff:

Edward B. Hipp
Commission Attorney

For the Using and Consuming Public:

George A. Goodwyn
Assistant Attorney General

WILLIAMS, COMMISSIONER: Application was filed with the Commission on September 20, 1967, by Lampe & Vann, a partnership seeking a Certificate of Public Convenience and Necessity for the sale and distribution of water in the Carriage Hills Subdivision, Wake County, North Carolina, as shown on map marked Staff Exhibit 1. The applicant further filed a schedule of proposed rates identified as "Exhibit C" attached to the application.

Notice setting said application for hearing on October 19, 1967, at 10:00 a.m. in the temporary offices of the Commission, Old YMCA Building, Raleigh, North Carolina, and setting forth the proposed water rate schedule was duly published in The News and Observer, a newspaper published daily and having general circulation in Wake County, North Carolina. When this matter was called for hearing on the

above date, the Applicant, J.G. Vann, the partner of Lampe & Vann most familiar with said operation did not appear. Customers were present to protest the granting of said Certificate and approval of the proposed rates. Due to the absence of Mr. Vann, the hearing was recessed.

By order of the Commission, dated November 15, 1967, this matter was again set for hearing on Thursday, January 18, 1968, at 10:00 a.m. in the temporary offices of the Commission, Raleigh, North Carolina, and notice of said hearing, setting forth the time and place for the consideration of this application and setting forth the proposed water rate schedule was again duly published in The News and Observer and this cause came on to be heard at the time and place specified in the Notice.

At said hearing the Applicant was present. Protestants were present and represented by George A. Goodwyn, Assistant Attorney General. Applicants and Protestants both offered evidence. Protestants offered evidence tending to show that the quality of water was not satisfactory, that the pressure was too low and that there was air in the system. Protestants also appeared in protest of metered rates as filed.

FINDINGS OF FACT

1. That Lampe & Vann is a partnership, composed of Ross W. Lampe, Faye L. Lampe, John G. Vann and Ruth L. Vann, with its principal office at 200 Hawthorne Road, Raleigh, North Carolina. It has purchased and now has in operation a water system for the distribution and sale of water and is actively engaged in distributing and selling water to the residents of Carriage Hills Subdivision, Wake County, North Carolina, and is now providing water to 23 lots within said subdivision.

2. By application filed with the Commission on September 20, 1967, the applicant seeks a Certificate of Public Convenience and Necessity to provide Water service in Carriage Hills Subdivision which is located approximately 1 1/2 miles from the City of Raleigh, North Carolina.

3. There is public need and demand for the distribution and sale of water in this subdivision.

4. At the time of the hearing in this matter the system which applicant owned in this subdivision had not been approved by the State Board of Health.

5. Protestants do not oppose the applicant furnishing the service. They protest applicant's failure to furnish an adequate supply of good, wholesome, useable water.

6. Applicant is financially able to render the service it seeks Certificate for and is financially able to improve its present facilities and construct additional facilities that

would enable it to furnish an adequate supply of good, wholesome water in this subdivision.

7. The Staff of this Commission and the State Board of Health, which was represented and offered evidence at the hearing, in keeping with directions from the Commission, have since the hearing in this matter made an investigation of applicant's system in said subdivision and have made recommendations setting forth certain changes and additions that should be made by applicant in order to improve service to the customers. These recommendations have been followed by the applicant and approval of its water supply from the Board of Health has now been obtained.

8. By letter dated September 9, 1968, to the Commission, Lampe & Vann requested that Exhibit C of their application filed in this matter be amended to show a flat rate unmetered basis of $5.00 per month, payable on a quarterly basis in advance, which was the current rate shown on the application. This request was allowed and the application so amended.

Applicant has already purchased the water system in Carriage Hills Subdivision. It has wells, storage facilities and underground piping. At the time of hearing, the water from its wells was not of acceptable quality, the pressure was too low and there was air in the pipes. It has been necessary for Applicant to improve its facilities to the point where they are adequate to meet the public need. To have required Applicant to discontinue service pending improvement of its system would simply have meant that the present customers would have been without any water service. There is a public need for the sale and distribution of water in this subdivision and applicant should be granted a Certificate of Public Convenience and Necessity. The applicant has complied with the requirements set forth by the Commission Staff and the State Board of Health. The water is now being treated and tests show that the quality of the water now meets the standards set forth in the United States Public Health Drinking Water Standards-1962. Improvements made to the water system have eliminated the air in the lines, larger storage facilities have been added and pressure has been improved by adding larger capacity pumps.

IT IS NOW, THEREFORE, ORDERED that Lampe & Vann be and is hereby granted a Certificate of Public Convenience and Necessity to construct, own and operate a water system in the Carriage Hills Subdivision.

IT IS FURTHER ORDERED that the rates herein proposed as amended be and they are hereby authorized to be filed under G.S. 62-138, and to become effective on one day's notice.

IT IS FURTHER ORDERED that the books and records of the applicant be kept in accordance with the Uniform Systems of Accounts established by this Commission for water utilities

and that the applicant be and is hereby required to operate this system in accordance with the rules and regulations of the North Carolina Utilities Commission for water utilities.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-254

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Regional Utility Company, Greensboro, North Carolina, for Certificate of Public Convenience and Necessity Authorizing it to Construct, Operate, and Maintain Wells, Water Pumps, and Water Lines, and to Distribute and Sell Water to Customers in the Bent Creek Subdivision, Asheville, North Carolina, and for Approval of Rates and Financing	)	ORDER GRANTING APPLICATION

HEARD IN: The Commission Hearing Room, Old State Library Building, Raleigh, North Carolina, on September 27, 1968, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Presiding, H. Alexander Biggs, Jr., and T.R. Eller

APPEARANCES:

For the Applicant:

McNeil Smith
Smith, Moore, Smith, Schell & Hunter
Attorneys at Law
P.O. Drawer G, Greensboro, North Carolina

For the Commission Staff:

Edward B. Hipp, Commission Attorney
Larry G. Ford, Associate Commission Attorney
P.O. Box 991, Raleigh, North Carolina

No Protestants.

McDEVITT, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on July 26, 1968, by Regional Utility Company of Greensboro, North Carolina, wherein the applicant seeks a Certificate of Public Convenience and Necessity for the sale and distribution of water in the Bent Creek Subdivision located in Buncombe County southeast of Asheville, North Carolina, as shown on

map attached to the application and identified as Exhibit A. Among the other exhibits attached to said application was a tariff of proposed rates identified as Exhibit H.

Notice of Hearing setting forth the time and place for consideration of this application and stating the proposed water rate schedule specified in Exhibit H was duly published in the Asheville Citizen and The Asheville Times, Asheville, North Carolina, and this cause came on to be heard at the time and place specified in the notice. At said hearing, evidence was heard consisting of the testimony of two witnesses for the applicant and of certain documentary exhibits.

Based upon the evidence received at the hearing and the verified statements contained in the application and the attachments thereto, which are uncontroverted, the Commission makes the following

FINDINGS OF FACT

1. Applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office at 1020 East Wendover Avenue, Greensboro, North Carolina, and with officers as follows:

President - Paul F. Schnabel
Vice President - Water Kirch
Secretary - Charles T. Gordon
Treasurer - R. D. Moody, Jr.

2. That the applicant owns, operates, and maintains wells, water pumps, water supply lines and distributes water to six or seven households in Section 3 of Bent Creek Subdivision, as described by Exhibit A attached hereto. That the Bent Creek Subdivision consists of six sections of which Sections 1 and 2 have been completed and there are presently about 150 residents living in these two sections. The applicant has installed a water system for the remaining sections of the Bent Creek Subdivision, and the City of Asheville is presently furnishing water to the residents of Sections 1 and 2. However, the residents of these two sections, through a Petition, have requested Regional Utility Company to supply their area in lieu of the City of Asheville. The City of Asheville has agreed to sell its existing water distribution system within the Bent Creek Subdivision to Regional Utility Company, and Regional has agreed to purchase it.

3. That the applicant proposes to install and operate water lines, pumps, supply lines, metering equipment, and to distribute and sell water through said facilities to all the residents of the Bent Creek Subdivision, including Sections 1 and 2 which are presently being served by the City of Asheville.

4. The applicant proposes to serve some 250 customers in said subdivision with metered service, including those 150 customers who are presently receiving service from the City of Asheville.

5. That the applicant presently has on file with the Commission a Certificate of Convenience and Necessity for sewer service in the Bent Creek Subdivision and is presently providing that service.

6. That the applicant has submitted detailed plans for its said water system to the North Carolina State Board of Health, which plans and specifications have been approved by said Board. That the applicant has submitted samples of water taken from the wells proposed to be used in connection with said water system, which water has been found to conform with the standards of the U.S. Public Health Drinking Water Standards - 1968.

7. That the applicant has made arrangements for the maintenance and upkeep of said water system with Mr. James F. O'Sullivan who will be the manager of the system.

8. That the water system has already been installed and constitutes a contributed asset of the applicant that is not subject to lien or encumbrance.

9. That the applicant is in all respects fit, able and willing to provide water service in the area described in the application.

Based upon the above Findings of Fact, the Commission makes the following

CONCLUSIONS

The Commission concludes that there is a demand and need for water service in the Bent Creek Subdivision, which need and demand cannot be met adequately by any other supplier, and that the public convenience and necessity will be served by the granting of a Certificate of Public Convenience and Necessity to the applicant.

IT IS, THEREFORE, ORDERED that Regional Utility Company, Greensboro, North Carolina, be and it is hereby granted a Certificate of Public Convenience and Necessity to construct, own, and operate a water system and to distribute therefrom water for compensation in those areas of the Bent Creek Subdivision in Asheville, North Carolina, shown on the Exhibits A and B to which reference is made for more complete description.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the system and accounts adopted by this Commission and that it shall otherwise comply in all respects with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a consolidated annual report in accordance with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the schedule of rates, as shown in the tariff attached to the application and marked Exhibit H, is hereby deemed to be filed as tariff schedules under G.S. 62-138, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this Order shall, in and of itself, constitute a Certificate of Public Convenience and Necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-227

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Robin Hood, Inc., Cedar Mountain, North Carolina, for a certificate of public convenience and necessity authorizing it to construct, operate, and maintain wells, water pumps, water supply lines, and to distribute and sell water to customers in Sherwood Forest, Lakes, Sherwood Ridge, and Sherwood Terrace, Transylvania County, North Carolina, and for approval of financing and of rates	ORDER

HEARD IN: Room 207, Buncombe County Courthouse, Asheville, North Carolina, on May 30, 1968

BEFORE: Commissioners M. Alexander Biggs, Jr. (Presiding), John W. McDevitt, and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Robert T. Gash
Attorney at Law
P.O. Box 347, Brevard, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Counsel

No Protestants.

BIGGS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission by Robin Hood, Inc., on December 14, 1966, wherein the applicant seeks a certificate of public convenience and necessity for the purpose of owning, operating, and maintaining wells, water pumps, water supply lines, and distributing and selling water to customers in Transylvania County, North Carolina, in an area known as Sherwood Forest, Lakes, Sherwood Ridge, and Sherwood Terrace Subdivisions. The application was first set for hearing on February 10, 1967, but was subsequently continued on several occasions at the request of the applicant until May 30, 1968, at which time it was heard in the Buncombe County Courthouse, Asheville, North Carolina.

FINDINGS OF FACT

Based upon evidence adduced at said hearing, notice of which was given in accordance with orders of the Commission, the Commission makes the following findings of fact:

1. That the applicant, Robin Hood, Inc., is a duly organized and existing corporation with principal offices located at Sherwood Forest, Cedar Mountain, North Carolina, and with the following named officers: President, Arthur M. Dehon; Vice President, Arthur M. Dehon, Jr.; and Secretary and Treasurer, Betty Morgan Dehon.

2. That the applicant now owns and operates a water system in a 1,000-acre area known generally as Sherwood Forest community and consisting of subdivided areas designated as Sherwood Forest, Sherwood Ridge, Sherwood Terrace, and Lakes, said water system consisting of certain wells, springs, reservoirs, water pumps, and distribution lines located in and running through said area.

3. That at the present time the applicant is serving 38 customers in said area and is subject, under applicable sections of the General Statutes of North Carolina, to the jurisdiction of the North Carolina Utilities Commission.

4. That at the time application was filed herein, the applicant failed to acquire the necessary approvals of the North Carolina State Board of Health for its said water system, and subsequent thereto the Commission sought to have applicant acquire such approvals but such approvals were not forthcoming for the reason that applicant's system was deficient in several respects, the most notable of which pertain to inadequate protection of water supplies and water reservoirs. Applicant's Well No. 2 was disapproved because of its close proximity to a stream, but it was stated that approval for it would be given if continuous chlorination was provided.

5. That the applicant is financially able to provide adequate water service to the residents in the area sought to be served, and through its officers and management it has indicated a willingness to comply with the requirements of

the North Carolina State Board of Health both now and in the future in order to assure the furnishing to its customers of an adequate supply of water meeting the minimum drinking water standards of the U.S. Department of Public Health, although it has not done so as of the date of the entry of this order.

6. That the residents of the area in question are not able to obtain water from any other public water supply and they have a need for the water to be furnished through the applicant's system.

7. That the wells, well sites, reservoirs, water pumps, and distribution lines used in the applicant's water system are owned by the applicant in fee simple and it has the right through easements to own, operate, and maintain said system in the area in question.

CONCLUSIONS

It is concluded that there is a need for the water service which applicant proposes to provide and that the public convenience and necessity requires the issuance of the certificate applied for in the application.

IT IS, THEREFORE, ORDERED:

1. That the applicant be and it is hereby granted a certificate of public convenience and necessity for the operation of a public water system in area designated on map identified as Applicant's Exhibit No. 1, labeled "The Audubon Colony, Sherwood Forest, Cedar Mountain, N.C." which map is on file herein and is made a part of this order by reference.

2. That as a condition to its commencement of operations under said certificate, the applicant shall, within 90 days of the issue of this order, furnish to the Commission written evidence that it has complied with all requirements of the North Carolina State Board of Health with respect to its water sources and shall furnish written approval of the North Carolina State Board of Health for its water system and of its water sources and their locations; and, further, the applicant shall within said time furnish to the Commission in writing the results of analyses made of the bacteria and chemical content of the water supplied in said system, which analyses shall show that said water complies with the minimum standards for drinking water of the U.S. Department of Public Health.

3. That prior to the commencement of providing service under said certificate, the applicant shall file with the Commission appropriate tariffs which are hereby permitted to become effective upon one day's notice provided the same are in accordance with the rates and tariffs specified in the application.

4. That the applicant shall keep its books and records in accordance with the rules and practices of the North Carolina Utilities Commission and shall file such reports and accounts as are required under said rules and as may be requested and required by the Commission from time to time in its continued surveillance of the quality of water being furnished by the applicant.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of December, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-241

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Springdale Water Company of Raleigh, 1514 Scales Street, Raleigh, Wake County, North Carolina, for certificate of public convenience and necessity authorizing it to construct, operate and maintain wells, water pumps, water supply lines, and distribute and sell water to customers in Springdale Estates Subdivision, Wake County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on October 20, 1967, at 10:00 a.m.

BEFORE: Commissioners M. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Marshall B. Hartsfield
Poyner, Geraghty, Hartsfield & Townsend
Attorneys at Law
P.O. Box 10096, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on September 22, 1967, by Springdale Water Company of Raleigh wherein the applicant seeks a certificate of public convenience and necessity for the sale and distribution of water in the Springdale Estates Subdivision, located in Wake County, North Carolina, as shown on map attached to the application and identified as Exhibit A. Among the other exhibits attached to said application was a tariff of proposed rates and identified as Exhibit C.

Notice of hearing, setting forth the time and place for the consideration of this application and stating the proposed water rate schedule specified in said Exhibit C, was duly published in The News and Observer, and this cause came on to be heard at the time and place specified in the notice. At said hearing evidence was adduced consisting of the testimony of witnesses and of certain documentary exhibits.

Based upon the evidence adduced at the hearing and the verified statements contained in the application and the attachments thereto, which are uncontroverted, the Commission makes the following

FINDINGS OF FACT

1. That the applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office at 1514 Scales Street, Raleigh, North Carolina, and with officers as follows: President, Lester C. O'Neil; Vice President, S.B. O'Neil; and Secretary-Treasurer, Jessie S. O'Neil.

2. That the applicant proposes to install and operate water wells, pumps, supply lines and metering equipment, and to distribute and sell water through said facilities to the residents of the Springdale Estates Subdivision, as shown on map attached to the application herein, identified as Exhibit A and entitled "Water System for Springdale, Lester C. O'Neil - Owner, near Leesville, Wake County, N.C.," dated October 20, 1966, to which reference is hereby made for a more perfect description of the area to be served and of the location of the water supply facilities through and with which service is to be afforded.

3. That the applicant proposes to initially serve 44 customers in said subdivision with metered service.

4. That applicant has submitted detailed plans for its said proposed water system to the North Carolina State Board of Health, which plans and specifications have been approved by said Board.

5. That the applicant has submitted samples of water taken from the well that is proposed to be used in connection with the said water system, which water has been

found to be safe for drinking purposes and suitable for human use and consumption.

6. That applicant has made arrangements with Poole Brothers, of Route 5, Raleigh, North Carolina, for the maintenance and upkeep of said water system.

7. That said Springdale Estates Subdivision is located outside the corporate limits of any municipality and beyond the reach of any existing public water system, and the water supply which applicant proposes to furnish to the residents of said subdivision is the only available central water supply.

8. That the water system, as shown on the map hereinabove referred to, has, with the exception of the individual metering equipment, already been installed and constitutes a contributed asset of the applicant that is not subject to lien or encumbrance.

9. That the applicant is in all respects fit, able and willing to provide water service in the area described in the application.

Based on the above Findings of Fact, the Commission makes the following

CONCLUSIONS

That there is a demand and need for water service in the Springdale Estates Subdivision, as shown on the map hereinabove mentioned, which need and demand cannot be filled or met by any other supplier and that the public convenience and necessity will be served by the granting of a certificate of public convenience and necessity to Springdale Water Company of Raleigh as set forth in its application.

IT IS, THEREFORE, ORDERED that Springdale Water Company of Raleigh be and it is hereby granted a certificate of public convenience and necessity to construct, own and operate a water system and to sell and distribute therefrom water in the Springdale Estates Subdivision as shown on the map attached to the application marked Exhibit A.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission in W-100, Sub 1, which books and records shall also be maintained in a subaccount manner so that the operating revenues, the plant investment, the relating depreciation reserve and contributions are readily obtainable.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a consolidated annual report in accordance with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the schedule of rates, as shown in the tariff attached to the application and marked Exhibit C, is hereby deemed to be filed as tariff schedules under G.S. 62-138, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this order shall, in and of itself, constitute a certificate of public convenience and necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of February, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-247

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Spring Hill Water Corporation, 1407 Atkinson Street, Laurinburg, North Carolina, for a Certificate of Public Convenience and Necessity to provide water service in the Spring Hill Subdivision, Scotland County, North Carolina, and for approval of rates	RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Old YMCA Building, Raleigh, North Carolina, on February 16, 1968, at 10:00 a.m.

APPEARANCES:

For the Applicant:

John E. Raper, Jr.
McCoy, Weaver, Wiggins, Cleveland & Raper
Attorneys at Law
222 Maiden Lane
Fayetteville, North Carolina

No Protestants.

McDEVITT, COMMISSIONER: Spring Hill Water Corporation (Applicant), 1407 Atkinson Street, Laurinburg, North Carolina, filed application on January 15, 1968, for a Certificate of Public Convenience and Necessity for authority to construct, operate, and maintain wells, water pumps, water supply lines, and distribute and sell water to customers in the Spring Hill Subdivision, Scotland County, North Carolina, and for approval of rates.

Public hearing was set by Commission Order of January 29, 1968. As required, Applicant gave due notice to the public by publication of Notice of Hearing in The Laurinburg Exchange, a newspaper having general coverage in the area to be served by the proposed water system.

No protests to the granting of the application were filed; no intervention was sought; no one appeared in opposition to the application. Applicant was present and represented by counsel of record.

Based on the evidence adduced at the hearing, the application and exhibits attached thereto, and the official records of the Commission, we make the following

FINDINGS OF FACT

1. Spring Hill Water Corporation, 1407 Atkinson Street, Laurinburg, North Carolina, is a duly organized and existing North Carolina corporation. The officers of the corporation are John S. Rorie, Jr., President; E.H. Evans, Vice-President; and J.W. Hollis, Secretary-Treasurer and Manager.

2. Applicant seeks a Certificate of Public Convenience and Necessity to provide water service to Spring Hill Subdivision, Scotland County, North Carolina. The subdivision and proposed water system, which is located approximately six miles from the City of Laurinburg, North Carolina, in an area bounded on the east by S.R. No. 1407 and on the west by the Laurinburg and Southern Railroad spur track just north of the track's intersection with S.R. No. 1421, are shown and described by Applicant's Exhibit B attached to the application.

3. Applicant proposes to construct, operate, and maintain wells, water pumps, water supply lines, and to distribute and sell water by metered rates to 202 customers in Spring Hill Subdivision.

4. The North Carolina State Board of Health, under date of November 15, 1967, and Serial No. 6287, approved the plans and specifications for Applicant's water system.

5. Estimated cost of construction of the water system when completed is $52,145. Of the required cost of construction, $29,250 will be derived from connection fees. Messrs. Edwin Morgan and E.H. Evans, stockholders of Spring Hill Water Corporation and owners of the development, have agreed to provide the necessary financing to construct and operate the proposed water system. Applicant and developer entered into a contract dated February 15, 1968, whereby Applicant agrees to construct the proposed water system.

6. The following rates and charges for the proposed services have been submitted to the Commission for approval:

Residential Service

Rate

$3.50 minimum for up to 3,000 gallons consumed per month.
$ .55 per 1,000 gallons or fraction thereof up to 10,000 gallons consumed per month.
$ .50 per 1,000 gallons or fraction thereof in excess of 10,000 gallons consumed per month.

Connection Charges: $250 per connection.

Reconnection Charges:

N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

Bills Due: Ten days after date rendered.

7. Spring Hill Water Corporation is ready, willing, and able, financially and otherwise, to construct, operate, and maintain the facilities proposed herein and to provide the necessary water service in the Spring Hill Subdivision, Scotland County, North Carolina.

CONCLUSIONS

The water service herein proposed is a necessary service and is for the convenience and benefit of the public in the area to be served by the Applicant as herein described. The area for which this service is proposed is not being served by any existing utility, nor can service be provided at reasonable costs through the extension of any existing system in the area. Public convenience and necessity requires the granting of the authority herein requested. The proposed rates are reasonable and should be approved.

IT IS, THEREFORE, ORDERED that the application be, and it is hereby, approved and the Applicant, Spring Hill Water Corporation, is hereby issued a Certificate of Public Convenience and Necessity for the construction, operation, and maintenance of a water system in the Spring Hill Subdivision located in Scotland County, North Carolina, as described in Applicant's Exhibits B and C attached to the application. This order of itself shall constitute the certificate herein authorized to be issued.

IT IS FURTHER ORDERED that the proposed rates be, and they are hereby, approved and authorized as the lawful rates and charges for Spring Hill Water Corporation.

IT IS FURTHER ORDERED that Applicant shall maintain the general books and records of the water system in accordance with the Uniform System of Accounts as prescribed by the National Association of Railroad and Utilities Commissioners, adopted by this Commission in Order W-100, Sub 1, and also in a subaccount manner so that the operating

revenues, the plant investment, the related depreciation reserve and contributions are readily obtainable.

IT IS FURTHER ORDERED that Applicant, Spring Hill Water Corporation, shall operate its water system in compliance with the rules and regulations of this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-249

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Westside Development Co., Inc., 1740 East Independence Boulevard, Charlotte, North Carolina, for a certificate of public convenience and necessity authorizing it to own, construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Westwood Forest, Mecklenburg County, North Carolina, and for approval of rates	ORDER GRANTING APPLICATION

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on March 1, 1968

BEFORE: Commissioners M. Alexander Biggs, Jr. (presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Kenneth R. Downs
Attorney at Law
715 Law Building
Charlotte, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

BIGGS, COMMISSIONER: Application was filed with the North Carolina Utilities Commission on January 15, 1968, by

Westside Development Co., Inc., of Charlotte, North Carolina, wherein the applicant seeks a certificate of public convenience and necessity to own, construct, operate and maintain wells, water pumps and water supply lines, and to distribute and sell water to customers in an area known as Westwood Forest located near Charlotte, North Carolina, which area is more specifically described in Applicant's Exhibit No. 4 herein, to which reference is made for complete description.

The application came on for hearing at the time and place above mentioned pursuant to notice of hearing issued by the Commission on January 25, 1968. At said hearing evidence was adduced consisting of oral testimony and certain documentary evidence.

FINDINGS OF FACT

Based upon the evidence thus adduced, the Commission finds the following facts:

1. That the applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office in Charlotte, North Carolina.

2. That the applicant proposes to install and operate water wells, pumps, supply lines and metering equipment, and to distribute and sell water through said facilities to the residents of Westwood Forest Subdivision as shown on map identified as Applicant's Exhibit No. 4 entitled "Westwood Mobile Home Community, Westside Development Company, Inc., Water Distribution Facilities and Details," dated November 15, 1967, by Henningson, Durham & Richardson, Inc., of North Carolina, Engineers-Planners-Consultants.

3. That the applicant does not now serve any residences in said subdivision but anticipates that it will ultimately serve 234 mobile home residences when the subdivision is completely developed.

4. That the applicant has submitted detailed plans for its existing water system to the State Board of Health, which plans and specifications have been approved by said Board.

5. That the applicant has submitted samples of water taken from its existing wells, which water has been found to conform to the standards of the U.S. Department of Health for drinking water.

6. That applicant has made arrangements for the maintenance and upkeep of said water system.

7. That said subdivision is located outside the corporate limits of any municipality and beyond the reach of any existing water system, and the water supply which

applicant proposes to furnish to the residents of said subdivision is the only available water supply.

8. That the wells, pumps, tanks, pipes and metering equipment that comprise said water system have been contributed to the applicant-corporation as unencumbered capital assets, although the lands upon which said system is laid out are subject to certain encumbrances.

9. That the applicant is in all respects fit, willing and able to provide water service in the area described above.

CONCLUSIONS

Based upon the foregoing Findings of Fact, the Commission concludes that there is a demand and need for water service in the area shown on the map above referred to, which need and demand cannot be filled or met by any other supplier, and that the public convenience and necessity will be served by the granting of a certificate of public convenience and necessity to the applicant.

IT IS, THEREFORE, ORDERED that Westside Development Co., Inc., of Charlotte, North Carolina, be and it is hereby granted a certificate of public convenience and necessity to construct, own and operate a water system and to distribute therefrom water in those areas of Westwood Forest Subdivision shown on the map filed with the Commission marked Applicant's Exhibit No. 4, which reference is made for more complete description.

IT IS FURTHER ORDERED that the applicant, prior to connecting any additional wells to the water system presently installed in said subdivision, shall first obtain from the North Carolina State Board of Health an approval of the plan and design of said well and shall submit samples of the water from said well for bacteriological and chemical analyses, the results of which analyses must indicate that said water conforms to the minimum standards prescribed by the U.S. Department of Health for drinking water before same is permitted to flow into the system, with documentary evidence of said approval and water analyses to be filed with the Commission.

IT IS FURTHER ORDERED that the applicant shall maintain general books and records in accordance with the Uniform System of Accounts adopted by this Commission, and that it shall otherwise comply in all respects with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the applicant shall file with the Commission a schedule of rates to be charged to customers purchasing water from it, which schedule of rates is hereby authorized to become effective on one day's notice.

IT IS FURTHER ORDERED that this order shall in and of itself constitute a certificate of public convenience and necessity for the operation of said water system.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of May, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-147, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Filing of Increased Rates by H & H Water Company, Inc., Morehead City, North Carolina, Pursuant to G.S. 62-134) RECOMMENDED ORDER

HEARD IN: Courtroom of Morehead Municipal Building, Morehead City, North Carolina, July 26, 1968

BEFORE: Clawson L. Williams, Jr., Hearing Commissioner

APPEARANCES:

For the Respondent:

Luther Hamilton, Esq.
Hamilton, Hamilton & Phillips
Attorneys at Law
Morehead City, North Carolina

For the Protestants:

Sherman T. Rock, Esq.
Attorney at Law
200 South 11th Street
Morehead City, North Carolina

For the Using & Consuming Public:

George A. Goodwyn, Esq.
Assistant Attorney General
P.O. Box 629, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp, Esq.
Commission Counsel

WILLIAMS, COMMISSIONER: By tariff filed with the Commission scheduled to become effective July 1, 1968, H & H Water Company, Inc. proposes to increase the water rates to

its consumers in Mansfield Park Subdivision, Carteret County, North Carolina from $4.75 to $5.75 per month, or if paid annually in advance, $5.00 per month.

By order of the Commission, dated May 31, 1968, notice was duly given to the public of said filing and the matter was set for hearing in the Hearing Room of the Commission, Raleigh, North Carolina, on June 20, 1968, with the provision that if no interventions or protests were received by the Commission, the Commission would determine the application on the facts set forth herein and the records of the Commission without public hearing.

Interventions and protests were received by the Commission following said notice and the Commission, by Order dated June 18, 1968, ordered suspension and investigation of the proposed rates and rescheduled the matter for hearing on July 26, 1968 at 10 A.M. in the Courtroom of the Morehead Municipal Building, Morehead, North Carolina, at which time and place the matter was heard.

From the evidence presented at said hearing and from the records of the Commission the Commission makes the following

FINDINGS OF FACT

1. H & M Water Company, Inc. is a duly certificated water utility authorized to provide water to the residents of Mansfield Park Subdivision, Carteret County, North Carolina and presently serves approximately 80 customers on a flat rate basis of $4.75 per month.

2. That for the calendar year 1967, the test period used in this proceeding, H & M Water Company, Inc. experienced a net loss on its operations, after accounting and pro forma adjustments, of $51.69 as shown in Schedule I of Respondent's Exhibit "A", and earned no return on its investment of the test period.

3. That the costs of the respondent's utility plant in service as of the end of the test period per books was $8,639.16, the depreciation reserve for said plant was $5,378.88, leaving a net investment in plant of $3,260.28.

4. During the year 1968, respondent has made improvements to its plant at a net cost of $1,389.42 giving respondents a net investment in plant of $4,649.70. This figure added to allowance for working capital of $956.46 results in a total net original cost investment in plant, including allowance for working capital of $5,606.16. No evidence was introduced on trended replacement or on fair value of the plant used and useful in furnishing the service. The proposed rates would yield a net return of 11.3% on the net original rate base of $5,584.25, or $631.00 per year, which return the Commission finds to be fair and reasonable for a utility of this nature.

5. That the intervenors and protestants main complaint was based primarily upon the quality of the water being sold by respondent and not upon the amount of the rate increase.

6. That the water being sold by respondents is extremely hard and has a high iron content. These conditions appear to be very common in ground water in the section of the State where respondent has its operation.

7. Said water is checked monthly by the State Laboratory of Hygiene as required by law and has been found safe to drink and free of bacteria.

8. That to reduce the hardness and high iron content of said water would require an additional investment of respondent in equipment at a cost of approximately $8,000.00 which investment would entitle respondent to a much higher rate for its water in order to earn a fair return on such investment.

9. That at the close of the hearing, counsel for the intervenors and protestants requested 30 days time within which to confer with their clients and to file with the Commission a statement of their position as to whether they would be willing to pay a rate for their water which would yield respondent a fair rate of return on such additional investment.

10. By letter filed with the Commission on October 9, 1968, Mr. Sherman T. Rock, Counsel for the Protestants, stated that he was unable to make such a statement of position as he could not get a consensus of the feelings of the consumers regarding this matter and stated that most of the consumers expressed a desire to treat the water at their own expense and in their own discretion by means of their own privately owned or rented water softening systems.

11. That the rates proposed by the respondent are fair and reasonable and will enable respondent to earn a reasonable rate of return on its investment.

The Commission, therefore, makes the following

CONCLUSIONS

Respondent has justified the need for additional revenues in order to earn a reasonable return on its investment and receive reasonable compensation for its services. It appears from the evidence that the water being vended by the respondent while not of the most desirable quality due to its hardness and high iron content is safe for human consumption and is of a quality fairly typical of ground water in this particular area. There is no evidence that the consumers would desire that the water be treated by respondent to reduce the iron content and hardness if it would result in a substantial rate increase. It clearly appears that such treatment by the respondent would result

in a substantial investment and increased operating and maintenance expense and, therefore, a substantial rate increase. It is noted that the complaint relating to service and quality of the water have no bearing upon a proceeding of this nature for an increase in rates and there is nothing herein to prevent the protestants, and intervenors from taking further proceedings in this matter relating to service or quantity of the water provided by the respondent, if they so desire.

IT IS, THEREFORE, ORDERED That the order of suspension and investigation issued in this docket, dated June 18, 1968, be and the same is hereby vacated and set aside and the respondent is hereby permitted to put into effect the tariff changes proposed in this docket upon one day's notice to the Commission.

IT IS FURTHER ORDERED, that the investigation instituted herein be and the same is hereby discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-95, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of H.C. Huffman Water Systems, Inc. For a Certificate of Public Convenience and Necessity to Provide Water Service and For Approval of Rates	RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina on February 29, 1968, at 10:30 A.M.

BEFORE: Commissioners Clawson L. Williams, Jr. (Presiding) and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

M.V. Yount
Attorney at Law
122 2nd Street, N.W.
Hickory, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

WILLIAMS, COMMISSIONER: The nature of this proceeding is shown in the caption. Proper notice of hearing was given as directed by the Commission. No protests were received to the granting of the application or to the approval of the proposed rates.

Based on the evidence introduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That H.C. Huffman Water Systems, Inc. (Applicant) is duly incorporated under the laws of the State of North Carolina and is authorized by its Articles of Incorporation to engage in the public utility business of furnishing water service. The Company's principal office is at Hickory, North Carolina. Its mailing address is Route 2, Box 740, Hickory, North Carolina.

2. That the applicant is seeking a Certificate of Public Convenience and Necessity in order to provide water service in the Spencer Road Park Subdivision, Catawba County, North Carolina, located three miles from the City of Hickory, North Carolina, adjacent to Highway No. 70A.

3. That the applicant proposed to provide service to some 72 lots within Spencer Road Park Subdivision.

4. That the applicant proposes to construct wells, water lines, pumps, storage tanks and other facilities necessary and required to provide adequate service to customers in the Spencer Road Park Subdivision. The details are contained in applicant's Exhibit B attached to the application.

5. That according to applicant's balance sheet of December 31, 1967, applicant has assets of $47,913.77, including net investment in plant of $36,695.12, and applicant's liabilities amount to $3,827.49.

6. That the applicant's water system plans have been approved by the N.C. State Board of Health under Serial No. 5748, dated March 14, 1966.

7. That the applicant's water was tested on February 19, 1968 by the Laboratory Division of the N.C. State Board of Health and found to be bacteriologically safe.

8. That the applicant stands ready, fit, willing and is financially able to provide the service herein proposed.

9. That the applicant further seeks approval of water rates:

WATER RATE SCHEDULE

Residential Service
Rate:

Metered Service -

Minimum $3.00 monthly for 3,000 gallons
Excess 50¢ per 1,000 gallons
Billed quarterly

Reconnection charge - $3.00

Connection Charge - $200.00 for each tap - including meter

10. That there is presently no public water supply or municipal corporation that can reasonably supply the area sought to be certificated with water service and there is a public need for water service in said area.

Based on the foregoing Findings of Fact, the Commission arrives at the following

CONCLUSIONS

1. That the area known as Spencer Road Park Subdivision, where approximately 72 homes are to be constructed, is now without any water service and there is a need for such service within said area.

2. That the applicant stands ready, willing, fit and financially able to provide water service to said subdivision.

3. That the Commission is of the opinion that public convenience and necessity requires the issuance of a Certificate of Public Convenience and Necessity to the applicant.

4. That it is further the opinion of the Commission that during this development period that the rates filed herein, the investment, and expense cannot reasonably and accurately be ascertained and, therefore, the schedule of rates herein proposed should be filed pursuant to G.S. 62-134.

In accordance with the above Conclusions and Findings of Fact IT IS, THEREFORE, ORDERED that the applicant, H.C. Huffman Water Systems, Inc., be and it is hereby issued a Certificate of Public Convenience and Necessity for the construction, ownership and operation of a water system in the Spencer Road Park Subdivision, Catawba County, North Carolina, which area is particularly described in applicant's Exhibit 2 and made a part hereof.

IT IS FURTHER ORDERED that the rates herein proposed be and they are hereby authorized to be filed on one day's notice pursuant to G.S. 62-134.

IT IS FURTHER ORDERED that the books and records of the applicant be kept in accordance with the uniform system of accounts established by this Commission for water utilities, and that the applicant be and is hereby required to operate this system in accordance with the rules and regulations of the North Carolina Utilities Commission for water utilities.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-225, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of G.W. Dobo, T/A Quality Water Supplies, Wrightsville Beach, North Carolina, for authority to increase tap fees and to reduce rates in the Harbor Villa Subdivision and the Windemere Subdivision in New Hanover County, North Carolina	ORDER APPROVING INCREASE IN TAP FEES AND AUTHORIZING REDUCTION IN RATES

In two separate filings received by the Commission on January 4, 1968, G.W. Dobo, T/A Quality Water Supplies, Wrightsville Beach, North Carolina, requests authority to increase tap in charges to $250.00 in the Windemere and Harbor Villa Subdivisions, New Hanover County, North Carolina. At the same time Mr. G.W. Dobo filed a request to reduce rates as follows:

First 3,000 gallons per month	$3.50 (minimum)
All over 3,000 gallons and not exceeding 8,000 gallons per month	.60 per 1,000 gal.
All over 8,000 gallons per month	.40 per 1,000 gal.
Tap in fee	$250.00

In support of this request, Mr. Dobo has submitted cost data indicating that the installed cost of the distribution system in the Windemere Subdivision was approximately $329.00 and the cost of installing the service line (vis. the line from the main to the property line including the meter) was $159.00 making a total price of $488.00.

The comparable installed cost for the distribution system in the Harbor Villa Subdivision was $263.00 and the cost of the service line in this subdivision was $159.00 making a total cost of $422.00.

Attached to the application is an affidavit in which Roland C. Fowler and wife, Myrtle C. Fowler, developers of the Harbor Villa Subdivision, and Gregory-Murray Construction Company and Richard Napier and wife, Sanders F. Napier, developers of the Windemere Subdivision, certify that they are aware of the request of Quality Water Supplies as proposed herein to increase the tap fees to $250.00 and that neither party have any objections to this authority being granted. These builders being the sole developers of the real estate in these subdivisions.

Mr Dobo further filed a schedule hereinabove described reducing rates for consumption from 3,000 to 8,000 gallons from $1.00 to $.60 per 1,000 gallons and consumption above 8,000 gallons was reduced from $1.00 to $.40 per 1,000 gallons. The minimum bill is not changed and allows 3,000 gallons for $3.50. This would reduce rates on an average consumption of 5,000 gallons by $.80 per month per customer. At the same time it would permit considerably more lawn sprinkling, car washing, etc.

Based on the application and data contained therein and the records of the Commission, the Commission is of the opinion that the proposed tap fees should be allowed and the reduction in rates should be authorized.

IT IS THEREFORE ORDERED that G.W. Dobo, T/A Quality Water Supplies, Wrightsville Beach, North Carolina, be and is hereby authorized to file on one day's notice a schedule of rates as herein proposed which schedule is hereby approved and authorized.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of March, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-229, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Filing by Western Utilities Corporation of)
Proposed Rates for Water Service) ORDER

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina, on November 9, 1967

BEFORE: Commissioners Thomas R. Eller, Jr. (Presiding), John W. McDevitt and Clawson L. Williams, Jr.

APPEARANCES:

For the Applicant:

Gerald R. Chandler
Attorney at Law
Hill Building
Albemarle, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P.O. Box 991, Raleigh, North Carolina 27602

For the Protestants:

R.L. Brown, Jr.
Brown, Brown & Brown
Attorneys at Law
P.O. Box 818, Albemarle, North Carolina 28001

ELLER, COMMISSIONER. In its Order issued August 29, 1967, the Commission granted a Certificate of Public Convenience and Necessity to Western Utilities Corporation (Western) to provide water at and near Locust, North Carolina, required it to make a number of improvements and changes in its facilities to improve service and authorized the company to file rates and charges for water services. Western filed its rates on September 5, 1967. Joint protest was filed for and on behalf of some 22 customers, the protests being grounded both on alleged inadequacy of service and on the level of rates sought. Hearing was set and held on November 9, 1967.

During the course of the hearing, it was made to appear that Western had not complied fully with the requirements of the Commission's Order of August 29, 1967, and that, in particular, Western was unable financially to install the meters called for by the order and provided for in the rates filed.

The Hearing was then by consent recessed to permit Western to comply with the Commission's previous order and otherwise improve its service, with the understanding that, until further notice, Applicant would not be required to install meters and would have flat monthly rates in lieu of metered rates.

On September 27, 1968, the Commission advised counsel of record of interim progress by Western on improvement of facilities and of the Commission's intention to enter an order approving a flat rate of $4.50 monthly for water service. The Commission is now in receipt of a letter answer from counsel for Protestants stating in part that service improvement had been noted, pointing out alleged

remaining deficiencies, and waiving further hearing as to the aforesaid flat monthly rate.

We are of the opinion that a flat rate of $4.50 per month should now be approved as the company's authorized rate and that formal proceedings should be terminated, subject to reopening as to service either on motion of Protestants or the Commission.

Accordingly, IT IS ORDERED

1. That Western Utilities Corporation be, and it hereby is authorized to file and make effective without further notice tariffs for rates and charges in accordance with the schedule contained in Appendix "A" hereto attached and incorporated.

2. That pending further order of this Commission, Western Utilities Corporation be, and it is hereby, relieved and discharged from any duty or obligation resulting from provisions of Commission Orders and directions requiring it to install water meters in the properties served by Applicant.

3. That the Commission's Engineer for Water Utilities be, and hereby is, directed to contact counsel for Applicant and counsel for Protestant in writing to arrange for, and within thirty (30) days to make, an on-site inspection of the properties and service of Western Utilities Corporation in Western Hills Subdivision and Barbara Ann Park Subdivision, with each counsel having the right to accompany or have his representative accompany, the Engineer on said on-site inspection, and then to file his written report with the Commission with copy to each counsel, said report to become a part of the official file in this docket.

4. The on-site inspection and report herein provided shall include, but is not limited to: (a) a determination as to the adequacy or inadequacy of pressure in Western Hills and, if inadequate, what remedial action has been taken at the time of the report; (b) a determination as to whether the water in either of the two subdivisions is "oily", "filmy", or otherwise discolored and, if so, what remedial action has been taken at the time of the report; (c) a determination of periods of outage in both subdivisions aforesaid and, if found to exist, the causes therefore, and what remedial action has been taken at the time of the report; (d) the extent to which continuing surveillance is necessary and, if so, recommendations on effectuating such surveillance.

5. With the foregoing provisions, these proceedings are hereby removed from the formal docket of the Commission, subject to reinstatement and reopening on motion of any party or the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of October, 1968.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

APPENDIX "A"

WESTERN UTILITIES CORPORATION
WATER RATE SCHEDULE

FLAT RATE: $4.50 per month.

Connection Charge: $250.00

Reconnection Charges:

N.C.U.C. Rule R7-20 (f) - $4.00
N.C.U.C. Rule R7-20 (g) - $2.00

Bills Due: Ten days after date rendered.

DOCKET NO. W-131, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of George Goodyear Company for Approval of Transfer of the Franchise and Assets of the Murrayhill Development Company Used in Provision of Service in the Mountainbrook Subdivision, Charlotte, North Carolina, to George Goodyear Company	))) ORDER)))

HEARD IN: The Hearing Room of the Commission, Old YMCA Building, Raleigh, North Carolina on June 6, 1968, at 10 A.M.

BEFORE: Commissioners Clawson L. Williams, Jr. (Presiding), Thomas R. Eller, Jr., and M. Alexander Biggs, Jr.

APPEARANCES:

For the Applicant:

James D. Monteith
Fairley, Hamrick, Hamilton & Monteith
Attorneys at Law
200 Law Building
Charlotte, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

WILLIAMS, COMMISSIONER: By application filed with the Commission on April 16, 1968, George Goodyear Company seeks approval of the acquistion of the franchise and all the assets of Murrayhill Development Company used in the provision of water and sewer services in Mountainbrook Subdivision, Charlotte, North Carolina.

This matter was set for hearing by Order of the Commission, dated May 15, 1968. Notice to the Public was duly given by service of the Notice of Hearing contained in said Order of May 15, 1968 upon each of the customers of the applicant and by publication in a newspaper having a general circulation in the area, to wit: The Mecklenburg Times, said notice being in accord with the said Order of May 15, 1968.

Based upon the evidence at the hearing, the verified statements contained in the application, and the exhibits received into evidence, the Commission makes the following

FINDINGS OF FACT

1. That the applicant is a duly organized and existing corporation under the laws of the State of North Carolina, with principal offices in Charlotte, North Carolina.

2. That Murrayhill Development Company was through August 30, 1965, a duly organized and existing corporation under the laws of the State of North Carolina and held a Certificate of Public Convenience and Necessity issued by this Commission in Docket No. W-113 for the provision of water and sewer service in Mountainbrook Subdivision, Charlotte, North Carolina.

3. That George Goodyear Company owned and held all the stock of Murrayhill Development Company and Mr. George S. Goodyear is the President and sole stockholder of George Goodyear Company; that Murrayhill Development Company no longer exists as a corporation having been dissolved at some time after August 30, 1965. George Goodyear Company is a real estate development firm and owns title to the unsold lots in Mountainbrook Subdivision.

4. That on August 30, 1965, Murrayhill Development Company transferred all of its assets to George Goodyear Company, including all of its right, title and interest in and to the water and sewer system in Mountainbrook Subdivision and its franchise to operate same, without knowledge that the transfer required approval by the North Carolina Utilities Commission pursuant to the General Statutes, and George Goodyear having been advised of the necessity of approval of this transfer by the Commission did, on April 16, 1968, file application with this Commission for such approval.

5. That approval of the transfer herein sought is justified by the Public Convenience and Necessity, is in the public interest and will not adversely affect the service to the public under the franchise and that George Goodyear Company is fit, willing, and able, financially and otherwise, to perform the service to the public under said franchise.

6. That the service rendered under said franchise by Murrayhill Development Company up to August 30, 1965 and thereafter by George Goodyear Company up to the present time has been adequate and satisfactory.

The Commission makes the following

CONCLUSIONS

There is a demand and need for water and sewer service in Mountainbrook Subdivision, Charlotte, North Carolina, and this demand has been adequately met by Murrayhill Development Company up to August 30, 1965, when it transferred its assets and franchise to George Goodyear Company without knowledge that said transfer required the approval of this Commission.

Since August 30, 1965, George Goodyear has rendered adequate and satisfactory service in said subdivision. It appears that, had Murrayhill Development Company and George Goodyear Company sought approval of this transfer at the time it was made, there would have been no objection and the approval would have been granted by the Commission. It further appears that said approval was not sought at that time simply through inadvertence and lack of familiarity with the requirements of the General Statutes. There has been no adverse effect upon the service under said franchise by the transfer and the Commission is of the opinion that said transfer should be approved.

IT IS, THEREFORE, ORDERED That the application for approval of the transfer of the assets of Murrayhill Development Company to George Goodyear Company, including its franchise to operate water and sewer systems in Mountainbrook Subdivision, Charlotte, North Carolina be and the same is hereby approved.

IT IS FURTHER ORDERED That George Goodyear Company be and it is hereby allowed to continue to operate under the schedule of rates presently in effect under said franchise and that George Goodyear Company shall maintain books and records in accordance with the systems of accounts adopted by the Commission and shall file annual reports and shall otherwise in all respects comply with the General Statutes and the Rules and Regulations of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

Subject Index

UTILITIES COMMISSION ORDERS FULL REPORT PRINTED
CONDENSED INDEX OUTLINE

SUBJECT INDEX

UTILITIES COMMISSION ORDERS FULL REPORT PRINTED

DETAILED INDEX OUTLINE

IX. WATER AND SEWER

A. Franchise Certificates

Subject Index to Orders Not Reported

TABLE OF ORDERS

Not Printed

Condensed Outline

TABLE OF ORDERS

Not Printed

Detailed Outline

6.	Rodney Cline - Order Cancelling Permit	T-1161, Sub 2	11-5-68
7.	Coastal Plains Distributing Company, Harry J. Kane, t/a - Order Cancelling Certificate of Public Convenience and Necessity for Failure to File Annual Report	T-708	5-29-68
8.	DeHaven's Transfer & Storage, Ruth DeHaven Long, d/b/a - Order Cancelling Certificate of Public Convenience and Necessity for Failure to File Annual Report	T-1276	5-29-68
9.	Ernest Ralph Efird - Order Cancelling Permit	T-1227	8-27-68
10.	Farmers Seed & Feed Co., Charles C. Farrior, t/a - Order Cancelling Certificate	T-1290	2-13-68
11.	Gresham Produce Transfer, T.C. Gresham, d/b/a - Order Cancelling Certificate of Public Convenience and Necessity for Failure to File Annual Report	T-1233	5-29-68
12.	Hawn Trucking Service, Jack L. Hawn, d/b/a - Order Cancelling Certificate of Public Convenience and Necessity for Failure to File Annual Report	T-1007, Sub 1	5-29-68
13.	Haynes Transfer, John Leon Worth, d/b/a - Order Cancelling Certificate of Public Convenience and Necessity for Failure to File Annual Report	T-941, Sub 1	5-29-68
14.	I.H. Hill Transfer and Storage, Ernest H. Long, d/b/a - Order Cancelling Certificate of Public Convenience and Necessity for Failure to File Annual Report	T-876, Sub 2	5-29-68
15.	Julian C. Hudgins - Order Cancelling Authority	T-1402	1-8-68

E. Sales and Transfers

1.	American Parcel Service, Robert Belmont Thorburn, d/b/a, from A.R. Bailey & C.E. Norris, d/b/a American Parcel Service	T-1154, Sub 5	7-3-68
2.	Herbert Hoover Barden, from T.C. Gresham, d/b/a Gresham Produce Transfer	T-1233, Sub 1	7-2-68
3.	Batson Transfer & Storage Company, Incorporated, from R.E. Batson, d/b/a Batson's Transfer, Storage and Furniture Company	T-879, Sub 1	7-8-68
4.	Benton Moving and Storage Company of North Carolina, from E.J. Benton, Jr.	T-215, Sub 7	12-30-68
5.	Cape Fear Motor Lines, Inc., from J.A. Dove, d/b/a Dove's Transfer	T-77, Sub 3	5-22-68
6.	Carolina Freightways, Inc., from J.L. Lorbacher	T-1430	8-13-68
7.	Coleman Trucking & Seeding Company, Inc., from Charles Coleman Trucking Company, Inc.	T-846, Sub 2	4-11-68
8.	Custom Towing Service, Inc., from White Star Body Works and Wrecker Service, Inc.	T-1434	10-22-68
9.	Custom Transport, Inc. - Order Approving Stock Transfer	T-569, Sub 4	11-1-68
10.	Fredrickson Motor Express Corporation - Order to Purchase its Outstanding Stock and Issue Notes in Payment Thereof	T-645, Sub 12	4-10-68
11.	Greenwood Transfer and Storage Company, Inc., from Bernice Ridenhour Winecoff, Executrix of the Estate of Henry Merlin Winecoff, Deceased, d/b/a Winecoff Transfer Company	T-240, Sub 2	3-19-68
12.	Walter Johnson Griffin from B & G Transport, Incorporated	T-1438	12-16-68

13.	F.W. Groves Trucking Company (a corporation) from Fred Wilson Groves	T-1084, Sub 4	12-16-68
14.	Harper Trucking Company, Thomas Oliver Harper, Jr., d/b/a, from J.W. Russell, d/b/a Russell Trucking Company	T-521, Sub 2	3-19-68
15.	J.R. Corporation, from Winston Movers, Inc.	T-920, Sub 4	5-7-68
16.	M & S Transport, Inc., from R.D. Sturdivant, d/b/a M & S Transport	T-578, Sub 4	12-30-68
17.	McCauley Bros. Moving & Storage, Inc., from Ernest Batts	T-1422	3-28-68
18.	Merchants Moving Company of Fayetteville, Inc., from Inman-Scarboro, Inc.	T-1423	4-24-68
19.	Mid-State Delivery Service, Inc., from A.H. Jones, d/b/a Mid-State Delivery Service	T-368, Sub 2	1-19-68
20.	N.C. Food Express, Inc. - Order Approving Stock Transfer	T-1092, Sub 4	2-2-68
21.	Neptune World-Wide Moving Corporation, Neptune World-Wide Moving of North Carolina, Inc., d/b/a - Order Approving Transfer of a Portion of Certificate No. C-38 from Forbes Transfer Company, Inc.	T-1427	7-2-68
22.	Northeastern Trucking Company from G & V Trucking Company, Inc.	T-1196, Sub 2	8-6-68
23.	Northeastern Trucking Company from Helderman Trucking Company, Inc.	T-1196, Sub 3	9-20-68
24.	Charles Parks Transfer Company, Fentriss A. and Charles Parks, d/b/a - Order Approving Change in Partnership	T-50, Sub 1	8-6-68
25.	Ray-Mac Supply Company, Inc., from Raymond McLeod, t/a Ray-Mac Supply Co.	T-1326, Sub 1	12-30-68

26. Boesel, Inc., from Frank D. Burge, d/b/a Burge Transfer & Storage	T-960, Sub 1	1-29-68
27. Security Storage Company, Inc., from Flowers Trucking Co., Inc. - Order Approving Sale and Transfer of a Portion of Certificate No. C-870	T-978, Sub 8	2-12-68
28. Sides Mobile Home Sales, Inc., from Hubert C. Fearington, d/b/a Sherwood Transport	T-1217, Sub 2	2-9-68
29. Specialized Services, Inc., from Superior Trucking Company, Inc., Reynolds Q. Black, d/b/a	T-1170, Sub 1	5-3-68
30. Sun Oil Company from Terminal City Transport, Inc., W.E. Sisson, Alice M. Sisson, and A. A. Perryman, Jr., d/b/a	T-1117, Sub 8	9-24-68
31. Superior Motor Express, Inc., from Harold C. Earnhardt	T-830, Sub 5	2-16-68
32. Tru-Pak Moving & Storage from C.V. Morgan, d/b/a S-C Movers	T-1429	9-24-68
33. West Transfer Company (a Corporation) from Malvin J. Parham, d/b/a West Transfer Company	T-483, Sub 3	2-13-68
34. Wolf Transfer, Incorporated - Order Approving Stock Transfer to American Truck Lines, Inc.	T-28, Sub 4	11-4-68

V. RAILROADS

A. Mobile Agency Concept

1. Alexander Railroad Company - Order Granting Authority to Discontinue Agency Station at Stony Point, North Carolina	R-9, Sub 2	12-12-68
2. Laurinburg and Southern Railroad Company - Order Granting Authority to Discontinue Agency Station at Raeford, North Carolina	R-2, Sub 1	2-12-68
3. Norfolk Southern Railway Company - Order Granting Authority to Relocate Station	R-4, Sub 56	1-29-68

14.	White Oak Development Corporation - Order Exempting Proposed Operation from Regulations and Dismissing the Application	W-186, Sub 48	3-22-68
B.	Name Changes		
1.	Sandhill Properties, Inc. - Order Approving Change in Corporate Name	W-150, Sub 1	3-11-68
C.	Sales and Transfers		
1.	City of New Bern from Aqua Co. - Order Approving Sale and Abandonment of Service	W-190, Sub 5	7-9-68
2.	Kannapolis Sanitary District from Ben F. Aycock, t/a Ben F. Aycock Water System - Order Approving Sale and Amending Certificate	W-8, Sub 5	7-19-68
3.	Town of Hamlet from Hamlet Water Company - Order Approving Sale and Transfer	W-29, Sub 5	12-10-68
4.	Kannapolis Sanitary District from Clyde Goodman - Order Approving Transfer and Cancelling Certificate	W-91, Sub 2	4-17-68
5.	City of Hendersonville from Mountain Home Water Association, Inc. - Order Approving Contract and Abandonment of Service	W-255	9-3-68
6.	Kannapolis Sanitary District from Troy H. Powers, t/a Powers Water Company - Order Approving Sale and Cancelling Certificate	W-14, Sub 2	7-19-68
7.	Sedgefield Sanitary District from Sedgefield Sewer Lines - Order Permitting Transfer of Assets and Cancelling Certificate of Public Convenience and Necessity	W-55, Sub 5	2-19-68

D. Securities

E. Miscellaneous